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COMMISSION OF INQUIRY INTO THE
USE OF DRUGS AND BANNED PRACTICES
INTENDED TO INCREASE ATHLETIC PERFORMANCE

B E F O R E:

THE HONOURABLE MR. JUSTICE CHARLES LEONARD DUBIN

HEARING HELD AT 1235 BAY STREET,
2nd FLOOR, TORONTO, ONTARIO,
ON MONDAY, APRIL 10, 1989

VOLUME 35

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(i)

C O U N S E L:

ROBERT ARMSTRONG, Q.C.
MS. K. CHOWN

on behalf of the
Commission

A. PRATT

on behalf of Charles Francis

MR. E. FUTERMAN

on behalf of Ben Johnson

MR. SOOKRAM
MR. L. LEVINE

on behalf of Dr. M. G.
Astaphan

MR. PREFONTAINE

on behalf of the Government of
Canada

ROGER BOURQUE

on behalf of the Canadian
Track and Field Association

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--- Upon commencing.

THE COMMISSIONER: Good morning, Mr. Earl.
You have already been sworn, Mr. Earl. Mr. Armstrong.

MR. ARMSTRONG: Thank you, Mr.
5 Commissioner.

ROSS EARL: Recalled

--- EXAMINATION BY MR. ARMSTRONG: (Cont'd)

10 Q. Mr. Earl, I wanted now to move to the
period in about May-June of 1988 and your own involvement
with Ben Johnson, Charlie Francis, and others who were
connected with Ben Johnson at that time.

15 And to start with, I would like to you take
your mind back to a period of time in late spring-early
summer when there were some reports, I guess mainly
newspaper reports, although perhaps some in the electronic
media, concerning Ben Johnson's situation, if I can put it
that way, concerning such things as taxes and automobiles
20 and so on. And did that prompt a meeting to take place,
and if so, where and when did it take place?

A. Yes. There was an article that
appeared in one of the daily papers that made a lot of
references to Ben having five or six sports cars and a lot
25 of other, you know, questionable items that had turned up.

And --

Q. Questionable items you mean such as --

A. Such as not having his taxes up to date, and the fact that Alan Eagleson was supposed to have
5 volunteered some assistance for Ben's trust fund, and so on and so forth. Many things in the article were not true, at least to my knowledge they were not true.

And there were repercussions that went all the way up to the CTFA, the Canadian Track and Field
10 Association. And a meeting was called just to examine what, you know, was and wasn't being done as far as, you know, Ben Johnson's situation was concerned.

Q. All right.

THE COMMISSIONER: What period of time are
15 we talking about here?

MR. ARMSTRONG:

Q. This is May, 1988?

A. This would be May; I believe it would
20 be about May.

Q. And indeed there was a meeting that was held the day before the Scarborough Optimist group was to leave to go to the training camp in Spain; is that not so?

A. I think this was held the day, it was
25 the Mazda group -- actually, it wasn't even the Mazda

group because it would be too wide. It was a group of sprinters that were going to be going to Europe to do a clinic in Spain. And it was definitively held on the same day because Charlie left the meeting in order to catch his flight.

Q. All right.

A. So, it was the same day they left to go to Europe.

Q. Again, I believe, Mr. Commissioner and Mr. Earl, the evidence here from Mr. Francis is that there was a track meet in Toyko on Friday, May the 13th, and it was a few days after the meet in Toyko on May the 13th that Charlie Francis and others left to go to Spain and they came home from Toyko for I think two or three days in there. So, it is about mid May or leading up to perhaps closer to the third week in May, that this meeting may have taken place. Would that be a fair --

A. Yes, that would be fair. They were on the go a lot, you know, from, you know, Europe and Japan.

Q. All right. Now, the meeting with representatives of CTFA, where was it, in Toronto or in Ottawa?

A. It was in Toronto in a lawyer's office up on Finch Avenue near the 401, near the 400.

Q. Who was there?

A. I was there, Ben Johnson, Charlie Francis, Glen Caulkins --

Q. Larry Heidebrecht?

A. I am not sure whether Larry was there.
5 Larry might have been there.

Q. All right.

A. Mr. Dupres was there, and Jean-Guy Ouellette was there, and the lawyer whose office we were using. I believe he was on the Board of Directors of the
10 CTFA.

Q. That would be Bruce Savage?

A. Yes, that would be Bruce Savage.

Q. And I don't know whether -- I can't recall Mr. Caulkins' name has surfaced in these
15 proceedings, but he was a person who had done some work by way of commercial endorsement in Canada on behalf of Ben Johnson; is that right?

A. He was, I believe, the Canadian representative for the Heritage Group that had a contract
20 which Ben had signed for promotions of various sorts.

Q. And the Heritage Group was an organization which Larry Heidebrecht had been involved with?

A. Larry had been a part of it. At this
25 time I believe Larry was out of it, and a chap by the name

of Drew Mearns was doing most of the work with Heritage Group.

Q. But Heidebrecht was still Ben Johnson's agent?

5 A. Yes.

Q. All right. In any event, the resolution of these various matters that had been bandied about in the press was the subject matter of the meeting?

A. Yes.

10 Q. And as it turned out, as I understand it, first of all there weren't nearly the number of cars that had been speculated upon in the press; is that fair?

A. I think that had been the total amount he had owned over the proceeding four or five years. As
15 he sold one, and got another one, they just added them up as him having them.

Q. All right. And so far as his personal financial position was concerned, I don't want to go into that at the moment, but the resolution of that was that a
20 firm of chartered accountants was retained to take a look at that, and if there was any necessity to put matters in order, then the chartered accountant would deal with that?

A. Yes. I think we had had, you know, the process started the proceeding year and had just sort of
25 fallen by the way side after the world record in Rome.

Ben just became very, very busy with all of his commitments. And at this particular meeting, they gave me a list of several possibilities and asked me to help Ben select one. And as a result, we selected Thorne Ernst & 5 Whinney because they seemed to be extremely reputable.

THE COMMISSIONER: I am sorry, you selected who?

THE WITNESS: Thorne Ernst & Whinney.

THE COMMISSIONER: Were you still advising 10 Mr. Johnson on his financial affairs at this stage?

THE WITNESS: Ben would come to me from time to time, not always.

THE COMMISSIONER: I am just wondering how you got involved in this at this stage?

15 THE WITNESS: I think I always did keep, you know, good relationships between Ben, Angella, Charlie, and most of that group.

THE COMMISSIONER: I see.

20 MR. ARMSTRONG:

Q. Was there also at this CTFA meeting a person by the name of Findlay, who looks --

A. Yes, there was.

Q. -- after the --

25 A. Steve Findlay was at the meeting.

Q. And he looks after, at that time he did in any event, the Athletes' Reserve Fund on behalf of the Canadian Track and Field Association?

A. Yes, he is the Athletes' Service Manager, I believe, and that's one of his major jobs.

Q. All right. Now, this meeting was held on the day that the group was going to depart for Spain, by that I mean the Charlie Francis' group and its sprinters were going to depart for Spain. Was that a matter of any discussion at this meeting?

A. Yes, it was. Ben kept changing his mind as to whether he really wanted to go to Spain or not. He wasn't, you know, totally sure. He was, I think, having some different ideas what he felt he should be doing.

THE COMMISSIONER: Wasn't he hurt in Toyko, though?

MR. ARMSTRONG: Yes, he pulled his hamstring.

THE COMMISSIONER: So, at this stage, he had been -- he had suffered an injury --

THE WITNESS He was hurting.

THE COMMISSIONER: -- in Toyko?

THE WITNESS: Yes. He had some soreness. I think it was a difference in opinion as to what would be

the best method for him to --

THE COMMISSIONER: We heard that from Mr. Francis. Mr. Francis wanted him to stay with the group?

THE WITNESS Yes.

5 THE COMMISSIONER: And be treated in Europe.

THE WITNESS: Yes.

MR. ARMSTRONG: With the assistance of Waldemar.

10 THE COMMISSIONER: Pardon?

MR. AMRSTRONG: With the assistance of Waldemar Matuszewski.

15 THE COMMISSIONER: That's right. And Mr. Johnson was exhibiting a preference I think to go to St. Kitts?

THE WITNESS: Yes, he was. When the group left actually early from the meeting to catch the plane, Charlie was under the impression that Ben would be going to Spain. There were some commitments in Spain dealing with I believe a sprint clinic where they were expecting Charlie.

20 THE COMMISSIONER: No, there was also a commercial commitment, I think, in Helsinki at that time?

THE WITNESS: Yes, there was.

25 MR. ARMSTRONG: A commercial commitment in

Helsinki, and in Padova in Italy later on. They were going for six weeks.

THE COMMISSIONER: But Helsinki was the original -- was the first commercial engagement he was supposed to attend.

MR. ARMSTRONG:

Q. Just before we move away from the meeting with the CTFA group, were the various representatives of the CTFA, that is Mr. Dupres, Mr. Ouellette, Mr. Findlay, did they -- and perhaps also Mr. Savage, did they express any view as to or interest in whether or not Ben went to Spain?

A. I think it was sort of just a foregone conclusion, when the meeting finished Ben was going to Spain. This was the feeling, this was the consensus of the entire group of everybody around the table.

Q. All right. And did the CTFA -- well, I take it by the use of word "consensus", it goes without saying that the CTFA group were in favour of Ben Johnson going to Spain?

A. Yes.

Q. All right. And we have heard that the CTFA in terms of these commercial contracts that some of these athletes had is in fact one of three parties to the

contract?

A. Yes.

Q. And presumably they would have expressed, and I am suggesting to you, they would have expressed an interest in seeing that Mr. Ben Johnson lived up to whatever his commitments were in respect of some of these commercial contracts, particularly the contract in Helsinki that he had by way of commercial endorsement, and then subsequently the contract in Italy that he had with Diadora?

A. Yes.

Q. Now, did you, after that meeting, learn that Ben Johnson had not in fact left with the group to go to Spain?

A. I received a phone call that that night from the Ben's mother. And she said that Ben was in a lot of pain, and that he had phoned Jamie Astaphan in St. Kitts, and Jamie wanted Ben to come to St. Kitts. And Ben and Ben's mother had decided that this was the best place for Ben to be.

I think there was a feeling or a comment made that travelling around Europe would not be the best way for Ben to have his leg injury recouperate.

Now, I phoned Jamie, Jamie Astaphan in St. Kitts. And he said that Ben was at a very low mental

state, that he was very, very depressed, and that he felt that, you know, we should have Ben or, you know, Ben should go to St. Kitts and spend sometime with him to try, and you know, get him back on track, to try get him healthy, or he may not even be running in Seoul.

THE COMMISSIONER: Of course there was a suggestion that Dr. Astaphan would meet the group in Europe?

THE WITNESS: Yes.

MR. ARMSTRONG: Yes.

THE WITNESS: Yes, that was --

THE COMMISSIONER: And join Waldemar and others so that they could treat him over there?

THE WITNESS: That's right. After the initial trip to St. Kitts that Jamie would accompany Ben to Europe.

MR. ARMSTRONG:

Q. And you obviously must have become aware of that that that became the plan that --

THE COMMISSIONER: The plan I think was instead of going to St. Kitts, Mr. Francis' plan was that --

THE WITNESS: Yes.

THE COMMISSIONER: -- that Mr. Johnson

would go to Europe, fulfill his commercial endorsement commitments --

THE WITNESS: That's correct.

THE COMMISSIONER: -- and Dr. Astaphan come
5 over and Dr. Astaphan, Waldemar would be together and he
would be treated in the Europe rather than going right to
St. Kitts?

THE WITNESS: Yes, that's correct.

10 MR. ARMSTRONG:

Q. All right. Now, we know that, of
course, from the evidence of Mr. Francis that that didn't
happen and there appeared to be one or more false starts
on that although eventually for a brief period of time
15 when the group was in Padova, Italy, in about the middle
or third week of June, Mr. Ben Johnson and Dr. Astaphan
did arrive in Italy and went up to Helsinki briefly and
back and left.

Did you become aware during that period of
20 time that the group was away, and Dr. Astaphan and Mr.
Johnson were in St. Kitts, and then subsequently in Italy,
of the fact that there appeared to be a falling out
between Mr. Francis on the one hand and Ben Johnson on the
other?

25 A. I think if you read the papers during

that period of time, you know, it was very much alive with all sorts of problems that were cropping up. There were comments that were, you know, supposedly made by Charlie about Ben, comments made, you know, by Ben on what Charlie had said about him. There were comments that Ben was going to be firing his agent, Larry Heidebrecht, and that he wouldn't be working with Charlie. And at one point he even said that he wasn't even going to run for Canada. There was just, you know, a massive amount of publicity that was circulating --

THE COMMISSIONER: Well, that was speculation. What did you know yourself about it?

THE WITNESS: I knew nothing about it because they were either in St. Kitts or in Europe.

MR. ARMSTRONG:

Q. All right. And at some point then did you become directly involved with first of all Ben Johnson in this issue, and in an attempt to get his view, and in an attempt to take some step forward in resolving what at least appeared to be a falling out?

A. When Ben came back from Europe and St. Kitts, he came to see me at my school.

Q. Would this be towards the end of June?

A. This would be the very end of June

because classes were out, and we were on one of our three P.A. days at the end of the year where we were organizing for the following year.

5 And Ben came in one day and we sat down and had a talk. And he said there were a number of things that were concerning him with the relationship between himself and Larry and Charlie.

10 And I asked Ben to come back the following day and we would sit down, you know, have some time to do some discussing and see if we could sort out what the problem was.

15 And the following day when Ben came back, Larry Heidebrecht came back with him. We sat down and talked for maybe 45 minutes or so. And there really didn't seem to be any big problem. Ben was quite happy with what Larry was doing and Larry understood --

THE COMMISSIONER: That's from the sort of the commercial aspect of the enterprise?

20 THE WITNESS: Yes. And I think at this time -- at this time, I sort of just made an observation that Larry being responsible for the commercial part of, you know, of Ben's contracts, that this is where he should concentrate all of his comments on, because there was the occasional line getting into the press where, you know, 25 the agent was making comments on the rehabilitation of the

athlete or the training of the athlete and they were just overlapping on to each other's, you know, turf. And Ben and I sat down, and we had said, look your coach should coach, your agent should be an agent, your doctor should be a doctor, and they should work together, they should concentrate on their own specific specialities and if there is a problem then we should get together and talk it out. It should not be talked out in the press.

I recall one article specifically where the paper had reported that Charlie Francis had said that Ben Johnson was probably using a lot of steroids in St. Kitts. And I said, I said to Ben, there was an article before you went, Ben, now this was in the paper, I said, Ben there is an article before you went that said you had five sports cars. Do you have five sports cars. And he said, no. And I said, well, if you don't believe what the papers says on one instance, why would you believe what the paper says on another instance. I said the only way to find out would be to sit down with these people and ask them if they made that comment.

And I said honestly, do you think Charlie would make a comment about steroids and you that way. And he said, no, I don't think he would.

Q. Well, was he upset about this comment that appeared in the paper concerning him and steroids?

A. Yes, he was upset.

Q. And when was it that he expressed that concern to you?

5 A. That was in the -- in the meetings when he came back from Europe, at my school.

Q. At the end of June at your school?

A. At the end of June, yes.

Q. We've got two meetings now. We've got the one with him alone ---

10 A. He came the first time.

Q. And then he came back the next day?

A. With Larry.

Q. With Larry Heidebrecht?

A. Yes.

15 Q. Which one meeting was it? Which of those two?

A. It was the first meeting.

Q. All right. And it was your suggestion to him that in order to clear the air rather than being
20 concerned with what was being said in the press, that he should sit down with the people directly involved and discuss things with them?

A. Yes, I asked him some simple questions. I asked him, you know, who was the best coach for him as
25 far as sprinting was concerned and he said Charlie. I

said, well, who's your best agent? He said Larry. I said who is the person you'd like to be, you know, doctored by? Who is the best doctor for you and he said Jamie. I said fine, then we should put these things back together, rather than having them fly apart.

Q. What about Waldemar Matuszewski, the masseur. Was there any discussion about him?

A. I don't believe we spoke too much of Waldemar at that time.

Q. All right. And just so I have it clear, the report that appeared in the press concerning steroids, was that attributed to any person in particular?

A. I believe the report was supposed to have been attributed to Charlie making comments on Jamie.

Q. I see. What, suggesting that he was the source of the steroids?

A. That Jamie was giving Ben steroids in St. Kitts.

Q. I see. All right. So, when Ben Johnson and Larry Heidebrecht showed up the next day, you indicated there didn't seem to be any great problem, that Ben Johnson was satisfied with Larry Heidebrecht continuing as his agent and I assume that Heidebrecht must have expressed satisfaction that he could still, himself, continue as his agent?

A. Yes, we went a little farther than that.
We went ---

THE COMMISSIONER: I'm sorry. What was the
follow-up -- was there a followup -- never mind what ---

5 THE WITNESS: I think there was more --

THE COMMISSIONER: Was there a followup
between Mr. Heidebrecht and Mr. Johnson over -- that Mr.
Johnson was not happy, you said earlier, with the way Mr.
Heidebrecht was looking after his commercial matters, his
10 financial matters or what?

THE WITNESS: I don't think -- I don't
think there was major fallout. There was just an awful
lot of ambiguity that was circling around ---

THE COMMISSIONER: You said the first
15 meeting ---

THE WITNESS: ---the position that Glen
Caulkins was taking in the position then and what Larry
was taking in the position.

THE COMMISSIONER: I thought you said that
20 the first meeting had -- the one alone, when he went to
your school?

THE WITNESS: Yes.

THE COMMISSIONER: that he was sort of
unhappy with Mr. Heidebrecht and Mr. Francis?

25 THE WITNESS: He was unhappy with

everything, including the country.

THE COMMISSIONER: Okay. All right. But he didn't tell you why he was unhappy to stay with Mr. Heidebrecht or....

5 THE WITNESS: He felt that, you know, Charlie and Larry, when they were having conversations together, you know, could be, you know, making deals that would have him a part of them which would possibly be, you know, appearances or to do to clinics or things like that
10 and he maybe was not a part of those decisions.

THE COMMISSIONER: I see.

THE WITNESS: And this was speculation and I said to Ben, well, if you're concerned about this then, you know, ask Larry and Charlie. If they're talking about
15 anything which is to concern commitments that, you know, you are going to be making that they include you in the conversations and this was covered with Larry Heidebrecht at the meeting.

THE COMMISSIONER: The next day?

20 THE WITNESS: Yes. I think we went a little farther with Larry and said that, you know, Larry was to make sure that he confined, you know, all of his comments to the area that he was specializing in, that he was not to make any comments on the coaching or, you know,
25 on the doctoring of Ben, that he was working as an agent.

And this is where he would, you know, concentrate on his comments.

And that was very agreeable. I don't believe Larry had made, you know, some of the overtones that seemed to be running around that might have been coming from all sorts of ambiguities.

MR. ARMSTRONG:

Q. Well, I guess what you're saying is that there was a lot of speculation in the press and nobody was entirely sure what the source of some of the speculation was?

A. That's true.

Q. And I take it there was suspicion within the group as to who may have been the source from within the group?

A. Yes.

Q. And so, what you were saying to Heidebrecht was, if you're going to make any comments to the press or others, you confine your comments to the areas of your expertise or concern which is the, in a sense, the business aspect of Ben Johnson's running and track career?

A. Yes, that's correct.

Q. All right. Now, moving on from Larry

Heidebrecht, was there some kind of meeting with Charlie Francis?

5 A. Yes. The day, I believe of the second meeting where Larry and Ben and I had met, that was the day that Charlie came back from Europe and we were also having a staff party at my house and I contacted Charlie, or he phoned me when he got back, and I asked him, come up and we had a little meeting at my place. And I asked him if he would be willing to meet with Ben and discuss some of Ben's concerns the following day.

10 Q. Now, can I just stop there. From the evidence as we've heard it, up to that moment in time, Ben Johnson and Charlie Francis had agreed or agreed to disagree in Padova about the 21st of June where they said they were going to part company, that Charlie Francis was no longer going to coach Ben Johnson.

15 So, I assume that when Francis got to your house, that day towards the end of June, that was still the situation?

20 A. Yes. At first he said he really didn't feel he needed to meet with Ben; that you know, Ben didn't want him to coach him and he wasn't interested in coaching an athlete that didn't want to be coached by him.

25 And I pointed out to Charlie that he had been with Ben for a lot of years and we were coming down

to the crunch and I felt that, you know, Ben might need someone who knew the preceding decade of Ben Johnson rather than somebody coming out of the blue.

5 Because Ben didn't have a handle on who he would use as a coach. There was speculation in the paper, you know, that, you know, person A or person B might end up to be Ben's coach. Ben was sort of anticipating that maybe he would coach himself. He was really sort of ambiguous on this.

10 Q. Well, indeed. Some of the speculation even suggested that maybe Dr. Astaphan would be his coach, is that not so?

15 A. Yes, there was some speculation that Dr. Astaphan. But there was also speculation of other Canadian coaches moving in and picking up Ben Johnson.

20 And I had just asked Ben if he would sit down and talk with Charlie to see if, you know, if that was the necessary way to go because Charlie was still the national sprint coach and no matter who coached Ben, there had to be some contact between Ben and the national sprint coach.

 So Charlie agreed to come around to my school and Ben had agreed ---

 Q. Before we get to that ---

25 A. Yes.

Q. ---meeting, can I just stop you there.
Did you, yourself, hold the opinion that the best person
to coach Ben Johnson was Charlie Francis, the person who
been coaching him for ten years and indeed had been his
5 only coach?

A. Yes. I felt Charlie was probably the
best sprint coach in the world.

Q. Okay. So Charlie Francis agreed to
come around to your house?

10 A. To my school.

Q. Sorry, to your school, all right?

A. So the next day, Charlie and Ben, you
know, came to ---

Q. No, no. But you spoke to Francis?

15 A. I spoke to Charlie that night.

Q. And I'm sorry, because I did have you
partway into the meeting -- I didn't get you out of the
meeting -- Charlie Francis' initial reaction was, well, I
don't need to speak to Ben Johnson. Ben doesn't want me
20 to coach him anymore, words to that effect?

Did the meeting go on from there to take a
different turn? It must have.

THE COMMISSIONER: You said something about
a stag, didn't you?

25 THE WITNESS: Pardon? Oh, I said it was a

staff party.

THE COMMISSIONER: A staff party, I'm sorry. I've got to be careful about that. And I think you said you -- did he come to the staff party?

5 THE WITNESS: No -- well, he came to my house and we had a meeting.

THE COMMISSIONER: All right. At the house there was a discussion and as you were the intermediary, you brought them together the next day.

10 THE WITNESS: Yes, I just asked him if he would be --

MR. ARMSTRONG:

Q. All right. But you're -- I'm sorry.
15 For some reason, I don't want to rush you into the next day. I just want you to tell me whether or not Charlie Francis, that day at the your house, the day that you were having the staff party, did he change his mind and agree that he would be prepared to talk to Ben Johnson about
20 picking up the reins and coaching him?

A. Yes, he did.

Q. All right. Did he say anything else of significance that day that you want to tell us about or was that the sum and substance of it?

25 A. I think that was the basic substance

THE COMMISSIONER: Did you discuss the grievance that Mr. Johnson had with him on that occasion or....

5 THE WITNESS: No, I think we just discussed ---

THE COMMISSIONER: Getting together?

10 THE WITNESS: Getting together and the fact that I had already spoken to Larry and Ben and that I, you know, from my position, I felt a lot of the difficulties had, you know, arisen from people overlapping into areas where other people should have, you know, had their say.

15 And that I felt that everybody should get together and have a chat occasionally, if there were some differences and opinions, and that we should have a sit-down meeting between Ben and Charlie to see if, in fact, you know, Ben and Charlie could work together.

MR. ARMSTRONG:

20 Q. All right. So, I'm sorry, we're there now?

A. We're at the next day?

Q. We're into the next day?

THE COMMISSIONER: Good. We got ---

25 MR. ARMSTRONG: Would you like to go back to

May 15th?

THE COMMISSIONER: No, no. Enough of the staff party.

5 MR. ARMSTRONG:

Q. All right. Where the next day and this is a meeting at the school with Ben Johnson and Charlie Francis and yourself. Anybody else there?

A. Not that I recall.

10 Q. All right. Tell us about that meeting, please?

A. Well, actually, it was probably one of the easiest meetings I ever ran because Ben and Charlie and both came in, they shook hands, sat down. We started
15 to talk and I just sort of ran through the things that, you know, I had been over already between Ben and Charlie. That in my estimation that, you know, part of the problem had been something which hadn't really existed, it had been something which had been created in the press and the
20 fact that they hadn't communicated, you know, amongst each other, like, you know, the group and that if each one of them concentrated on their field of expertise and they talked to each other and didn't talk through the press, that we could probably, you know, solve a lot of problems
25 and have a lot of less bruised egos.

And they both agreed and they walked out arm-in-arm and I think the parting comment was, if you see anybody from the press, make no comment. And I believed somebody did corral them.

5

Q. That was their advice to you?

A. That was my advice to them.

Q. That was your advice to them?

10

A. Yes, if they met anybody from the press, make no comment and I believe one of the papers printed a story which basically indicated that they had stumbled across the two and they had asked for some distance to just settle in and recouperate or relax.

15

Q. All right. In any event, as you say, it was probably the easiest meeting you ever had and it really came down to this, that in very short order, both agreed that they wanted to team up again with Charlie Francis coaching and Ben Johnson running?

A. They both wanted to work with each other.

20

Q. All right. Now, we know from Mr. Francis' evidence that indeed that -- that, of course, happened, that Ben Johnson was back at the track at York University resuming his training program which he had already undertaken in St. Kitts and he was coaching.

25

Now, at some time in the month of July, did

you have some personal contact with Dr. Astaphan in Toronto?

5 A. Yes. I was going through the group of people around Ben and trying to talk to each of them, one at a time, as they became available.

 And Jamie was supposed to be coming up to Toronto, I believe, the weekend following the meeting I had had with Charlie and Ben and that kept getting put off. And I think he arrived about a week and a half later
10 which would be in the early part of -- or towards the middle of July.

 And when Jamie arrived, I asked Jamie to come and sit down and we would -- we would talk and Jamie and I had one meeting and then Jamie and Charlie and
15 myself and, I believe Larry, had a meeting and we just basically ran through, you know, what had happened prior -- that there had been a lot of confusion because there's been a lot of bantering going back and forth in the press and that each person would concentrate on their
20 own specific area of expertise and they would communicate with each other; that even though the coach may know the best way to coach, he should have good contact with the doctor and visa-versa.

25

A. I think that was agreeable to everybody. It just seemed so much like common sense that it was just accepted that was the way it should be.

5 Q. And either at that time or subsequent to that time, was there some discussion between Dr. Astaphan and you, perhaps others, about what financial arrangements would be made between Ben Johnson and Dr. Astaphan?

10 A. Ben and I had touched on the financial arrangements back at the meeting in June, and I think what had happened was that when Ben first went to St. Kitts, he had asked Jamie to travel with him through the competitions and the preparation up to Seoul, and Jamie had indicated that he had a practice and would be losing a
15 lot of money because of contracts that he had with various hotels, that he would have to either give up or pay people to look after. And Ben indicated to me that, you know, he had volunteered to pay Jamie a fairly substantial amount of money if Jamie, you know, would accompany him, and I
20 think the amount of money agreed upon was 10,000 a month and I believe it was to run from June through until October.

25 Q. Yes. And you participated in that discussion with Ben Johnson. Did you also participate in that discussion with Dr. Astaphan?

A. I think it was a set conclusion at that time. I don't think I discussed that with Jamie at all. I think that was something that had been agreed upon between Ben and Jamie, and I knew it was happening because, you know, the money was to come from the ARF account as one of Ben's expenses, and we had contacted the CTFA and they would accept that.

Q. All right. In any event, Dr. Astaphan put in writing what his understanding of that arrangement was and sent you a letter in which the terms of this agreement were set out; is that not so?

A. Yes. I'm not sure which letter you are referring to. That could be the one that I wrote.

Q. I am just going to--no, I am not talking about the one you wrote. That comes later. I'm going to show you a letter dated July the 19th, 1988, from Dr. Astaphan to you. Do you recognize that letter?

A. Yes. Yes, that's correct. I asked Jamie to put something down in writing so that we could have something we could forward to the CTFA.

Q. I want to go over this letter with you, but could we have it, Mr. Commissioner--

THE COMMISSIONER: There is some writing on top. Whose is that?

THE WITNESS: That writing is mine on the

top.

MR. ARMSTRONG:

Q. It looks like it's a note from you to
5 Mr. Findlay.

A. Yes, it is.

Q. And Mr. Findlay is Steve Findlay who we
referred to earlier as the athlete's representative of the
CTFA?

10 A. Yes, Steve Findlay.

THE COMMISSIONER: What number, please?

THE REGISTRAR: 132.

15 ---EXHIBIT NO. 132: Letter dated July 19th, 1988, from
Dr. Astaphan to Mr. Earl.

THE COMMISSIONER: The amount of
compensation was discussed with you first and Mr. Johnson
before you got this letter?

20 THE WITNESS: Yes.

THE COMMISSIONER: And you say you don't
recall discussing with Dr. Astaphan because I must have--

THE WITNESS: Ben and I had discussed on a
possible fee, and Ben was, sort of, fluctuating around 10,
25 15 or 20,000 and we had tried the 10,000 on for size and

Jamie had agreed to the 10,000. Now, when Jamie came up from St. Kitts, it was pretty well, you know, set that 10,000 was the fee that was agreed upon so Jamie and I didn't really have a discussion on it.

5

MR. ARMSTRONG:

Q. And the \$10,000 figure, that was a figure that was reached in agreement between Dr. Astaphan and Ben Johnson?

10

A. Yes.

THE COMMISSIONER: Well, after consultation with you, I gather?

THE WITNESS: Yes, and this money was to come--

15

THE COMMISSIONER: Beforehand. I think you said it was agreed beforehand and you discussed it with him afterwards; is that right?

20

THE WITNESS: Well, Ben and I had talked together about it and then Ben had gone back to Jamie and presented that with Jamie. But the money was to come out of the Athlete Reserve Fund which was Ben's money. I believe one of the papers printed that it was Scarborough Optimist's money that--

25

THE COMMISSIONER: Let's forget what was in the paper all the time.

THE WITNESS: Okay.

MR. ARMSTRONG: Well, it's perhaps my fault, Mr. Commissioner, for making reference to what was in the papers, but unfortunately that's what leads this--

5 THE COMMISSIONER: I understand.

MR. ARMSTRONG: --this witness into this particular area because there is a lot of information floating around that leads Mr. Earl to say let's get these people together face-to-face.

10 THE COMMISSIONER: I understand that. That indicates why he got them together, but right now we're closer to factual evidence.

MR. ARMSTRONG:

15 Q. Now I'm sorry, Mr. Earl. It may be because I have muddled the waters and confused the issue, but insofar as that \$10,000 per month is concerned, I thought I had understood you to say that that was a figure that was agreed to between Ben Johnson and Dr. Astaphan
20 before Dr. Astaphan, in fact, even came up from St. Kitts and that really was a fait accompli, as it were, before you became involved in these discussions?

A. Before I became involved in the discussion with Jamie because Jamie came up. It was in
25 mid July. But Ben and I had talked about the figure at

the end of June, which would be about the 27th or 28th of June.

Q. All right, and in your discussions with Ben Johnson, was there more than one figure that was suggested as a possible figure to pay Dr. Astaphan?

A. Yes, we talked about 20,000, we talked about 15,000, we talked about 10,000.

Q. And was this per month?

A. This was per month.

Q. And how was the \$10,000 arrived at?

A. This was a figure that Ben felt comfortable with. You know, this was more his idea than anything else.

Q. All right. Now let's go to the letter. First of all, in the very first sentence of the letter which is addressed to you, Dr. Astaphan says, "Further to our discussions of July 14th, this letter will document the services which I have provided and will continue to provide to Ben and to record our agreement, you as Ben's agent, and myself with respect to my remuneration therefor."

Now Dr. Astaphan seems obviously to be referring to a meeting that took place with you and him and presumably Ben Johnson on July the 14th?

A. No, I'm not sure whether Ben was at

this specific meeting, but yes, there was a meeting on July the 14th. That was when Jamie had just come up from St. Kitts I believe.

5 Q. All right, and presumably all of these matters that are in the letter that I am going to review with you momentarily are matters that were discussed in this meeting with Dr. Astaphan on July the 14th?

A. Yes.

10 Q. All right. And why don't you just take us through the letter, if you would, beginning with Section A, Services. Just read it through because I think it will be helpful, please.

A. The Section A Services said,
15 "Diagnosis, treatment and rehabilitation of his injuries, maintenance of his physical and psychological integrity and wellbeing so as to avoid injuries in the first place."

Q. Now just stopping you there, again this
may be one of my often glimpses into the obvious, but what Dr. Astaphan was doing is he is simply setting out the
20 kinds of services that he has already rendered and intends to continue rendering to Mr. Johnson?

A. Yes.

Q. All right, then read the next section,
please.

25 A. "The timeframe I have rendered these

services to Ben since 1983, but for these purposes only, those services rendered by me as of mid May 1988 are relevant." He is talking about the fee that was going to be charged.

5 THE COMMISSIONER: Well, the fees started from mid May because he wants too much I think prior to July, right?

THE WITNESS: Yes.

10 A. "I will continue to render these services until mid October 1988 or subject to agreement to some later date as required by the then prevailing circumstances."

MR. ARMSTRONG:

15 Q. And then the heading "Fees and Expenses". Could you read that, please?

A. "Fees and expenses. For these services I am to be compensated as follows: A monthly fee, \$10,000 U.S. Ben will be responsible for the payment of all of my
20 airline travelling and incidental expenses to include tickets and hotel, board and lodge. Ben will be responsible for the payment of all medications, nutritional supplements and of all necessary equipment such as bandages, splints, et cetera. The monthly fee
25 will be payable monthly in advance on the 15th of the

month. Please note that I am now due to be paid two months' fees to mid July. The monthly fee for the month mid July to mid August is also now due. I would appreciate having these fees paid U.S. 30,000 by the end of July 1988."

Q. All right, and then there is reference to the arrangements for travel expenses and the fact that he's still awaiting the receipt of \$4200 U.S. related to his travel to Padova, Italy, and then we will just read that penultimate paragraph, please.

A. The last paragraph or the one you are referring to?

Q. The second last one, as I said, "To all involved".

A. "All travel and expenses will be paid according to this agreement. I will not be responsible for purchasing any travel airline or other tickets, nor for making any hotel or other reservations. All of my travel is to begin from and end in St. Kitts, West Indies. Tickets are to be sent to me in St. Kitts at least 48 hours in advance of my travel out of St. Kitts. Please note that I am awaiting \$4200 U.S. that I incurred as an additional cost of tickets for Ben and myself to travel to Padova, Italy, last month. I would like to have this money reimbursed to me by the end of July 1988. As I have

said to all involved, Ben now has been in the best shape of his career, as Charlie Francis will attest to Ben's recent practice runs and have indicated the results of my care. He is doing PB's, which are personal records, in the past few months continually and with ease."

Q. Personal best. All right. Then he asks you to sign the attached copy of this letter to signify your agreement with its contents, and I see that you don't sign it but Ben Johnson's signature is there too?

A. Yes, Ben has signed it.

Q. So presumably you took a copy of this letter to Ben Johnson, did you?

A. Yes.

Q. And did he read it over and sign it?

A. Yes, and this letter was actually to be sent to Steve Findlay of the Canadian Track and Field Association so that he knew what the \$10,000 was covering. This was one of the couriers that the CTFA had put forth that they would like to have something in writing as to what Jamie would be putting forth for the 10,000 that was being requested to pay him for that monthly fee.

Q. And it appears from your--

THE COMMISSIONER: Is this Mr. Johnson's signature?

THE WITNESS: Yes, it is.

MR. ARMSTRONG:

5 Q. It appears from your covering
handwritten note on the first page that the document was
sent to the CTFA?

A. Yes, it was.

10 Q. And I assume that the Canadian Track
and Field Association then looked after the relevant
payments to Dr. Astaphan out of the Athlete's Reserve
Fund?

THE COMMISSIONER: Apparently they missed
the first phase. Is that what's happened? You sent it
back to them, I guess, did you?

15 THE WITNESS: This is a bad story. I sent
the letter to Steve Findlay by Priority Post and it hadn't
arrived--

THE COMMISSIONER: Is that the mistake you
made?

20 THE WITNESS: Yes, I should have sent it by
courier.

THE COMMISSIONER: Well, it may not be fair
to Priority Post. All right.

25 MR. ARMSTRONG:

Q. All right then. Did the Canadian Track and Field Association through the Athletes' Reserve Fund so far as you are aware make the appropriate payments to Dr. Astaphan?

5 A. Yes, I believe they did. I don't believe they made the last one. I don't believe they made the October one, but they made the payment referred to in here.

10 Q. All right. We will be hearing from representatives of the CTFA, and I suppose we can nail that down at that time if necessary. Now, are you aware of any other payments made to Dr. Astaphan other than those provided for in this agreement for services that he had rendered prior to the middle of May 1988?

15 A. On one occasion, Ben came to me and I had some of his money in the safe and he asked for some money to take to Jamie. He asked for \$10,000.

THE COMMISSIONER: How much?

THE WITNESS: \$10,000.

20 THE COMMISSIONER: This was cash?

THE WITNESS: This was in cash.

MR. ARMSTRONG:

Q. And when was that?

25 A. I'm not exactly positive whether that

was in May or June.

THE COMMISSIONER: Where was the cash kept?
Did you have cash?

5 THE WITNESS: I had a safe and Ben would
occasionally give me money orders or bank drafts to hold
for him before we sent them up to the Athlete Reserve
Fund.

THE COMMISSIONER: So this money had not
yet been sent to the reserve?

10 THE WITNESS: This money had not yet been
sent. Ben said that he needed \$10,000 of it to take to
Jamie Astaphan.

THE COMMISSIONER: What date was this? I'm
sorry.

15 THE WITNESS: I'm not positive of the date.
I believe that could have been in May.

MR. ARMSTRONG:

20 Q. Well, let me help you here and suggest
that it was probably around the time shortly before the
time that he left to go down to St. Kitts in May of 1988.

A. Yes.

25 Q. And at the time that he had made the
decision to go and see Dr. Astaphan in St. Kitts or to go
to St. Kitts rather than going to Spain?

A. Yes.

Q. And he came to you and asked you for \$10,000 cash, and presumably you had that available in the safe where you were keeping some of this cash?

5 THE COMMISSIONER: I thought you said it was for Dr. Astaphan now?

MR. ARMSTRONG: Yes, I did. No, I think I included that in my question. If I didn't, I apologize for that.

10 THE COMMISSIONER: Yes, you did that. You said he needed it for Dr. Astaphan?

THE WITNESS: Yes.

THE COMMISSIONER: Did he say what for?

THE WITNESS: No, he didn't say what for.

15 MR. ARMSTRONG:

Q. Well, did you not question him as to what it was for?

20 A. I knew Ben had been down to see Jamie on several occasions and I knew that, you know, doctors usually demand the money sooner or later and that he was probably just taking money down that he owed Jamie.

THE COMMISSIONER: For past services?

25 THE WITNESS: For past services or future services or whatever.

MR. ARMSTRONG:

Q. And what was the--had he ever come to
you and asked you for an amount of cash of that sum before
5 for Dr. Astaphan or anybody else?

A. I don't believe so.

Q. All right. When you were questioned by
him as to what the money was for, did he suggest that it
was for medical supplies?

10 A. He just said he needed it for Jamie.

Q. I see.

15

20

25

Q. And did that cause you any concern as to why he would be taking a sum of cash that large to Dr. Astaphan?

A. No, it didn't cause me any concern.

5 Q. So, I guess if it didn't cause you any concern, you didn't express any concern to Ben Johnson?

A. No. I think the only time, you know, I expressed any concern was basically that we had sufficient monies to send what was necessary to the fund, the ARF
10 fund.

Q. Well, you didn't say something like, well, Ben, \$10,000.00 is a lot of money, it's particularly a lot of money in cash, you are taking this out of your own cash as opposed to out of the Athletes' Reserve Fund,
15 what are you going to do with this, and why are you taking it to Dr. Astaphan. You didn't ask any sort of inquisitive questions like that?

A. No, I didn't.

Q. Why not?

20 A. As I said, I -- I know that Ben had been down to see Jamie, and Jamie had been doing a lot of work, you know, with Ben over quite a period of time. And I knew that Ben owed Jamie money, and Ben had never come to me for money before. And I just felt he was paying,
25 you know, paying some of the past debts that he owed.

Q. Well, when you say you knew that Ben owed Jamie money, what did you believe he owed him money for?

5 A. Well, Ben, as the letter referred to, even in this particular case, Jamie had been Ben's doctor. And Ben had been, you know, many times to see Jamie, and he had had various treatments and he had never, you know, picked up any money or told me that he paid money to Jamie. On one or two occasions with Charlie, Charlie had
10 said that, you know, Ben owes Jamie quite a bit of money and, you know, I wish he would, you know, get around to covering this.

And I felt that maybe the fact that, you know, Ben's leg was hurting, maybe he was going down and,
15 you know, covering some of his debts because he was looking for also some more medical treatment from Jamie.

Q. Well, it was back -- was it back in 1985 when the Scarborough Optimist Club made \$2,000.00 available to Dr. Astaphan to do certain tests of the
20 sprint group of athletes?

A. Yes, I believe it was 1985.

Q. All right. So that \$2,000 would have covered any testing that was done of the athletes by Dr. Astaphan, including Ben Johnson?

25 A. That would be at that time. That was

the -- a group of athletes that I believe consisted of about 15 or 16 athletes.

THE COMMISSIONER: That was to cover that one particular assignment that he requested?

5 THE WITNESS: Yes.

MR. ARMSTRONG:

Q. All right. Then in the years 1984, '85, and up to September the 1st, 1985, Dr. Astaphan was
10 practicing in Ontario, in Toronto, and presumably any of his medical services would have been available to Ben Johnson through OHIP, would that not be so?

A. I would assume that, yes.

Q. So, the \$10,000.00 cash that Mr.
15 Johnson gets in May of 1988, would have to relate to medical services provided to Ben Johnson outside of Ontario between September 1st, 1986 and May of 1988?

A. Yes.

Q. Were you aware of what kind of medical
20 services were performed to Ben Johnson outside of Ontario between September 1st, 1986, and May of 1988, which would attract a cost of \$10,000.00?

A. I was not aware of any services, but at
this time the Mazda group was pretty much functioning on
25 its own. And the Canadian Track and Field Association had

more contact, you know, more contact with the Mazda group than I did. And I was just watching the program as it went along, sort of thing.

Q. We know from the evidence that the Mazda group was in St. Kitts for a period of time in December 1986, and that included Ben Johnson. Then in 1987, so far there isn't any evidence that Ben Johnson was in St. Kitts; although, of course, he may have been.

In 1988, on the evidence as we have it so far, he was there for about a one-week holiday with Desai Williams in February-March period. And then, of course, he then went in the middle of May. Are you aware of his being in St. Kitts at any other times than those I have just mentioned?

A. No.

Q. All right. I don't want to flog this, as it were, but I take it it just didn't occur to you to put all of those facts together and say to yourself, well, \$10,000.00 cash for whatever Dr. Astaphan may have been doing in St. Kitts seems like an awful lot of money --

MR. LEVINE: Excuse me, sir, just one comment my friend has made. As he is aware in the Province of Ontario until very recently doctors were allowed to extra-bill over and above the OHIP rate. And I don't think that's been put to the witness as far as --

THE COMMISSIONER: Mr. Earl doesn't know what it was for, I don't think, Mr. -- he assumed it was for medical services. He did not make any further inquiry.

5

MR. ARMSTRONG: All right.

THE COMMISSIONER: I think that's a fair summary. Is there something else you want to pursue on this? He said he didn't make any further inquiries. He didn't know what the money was for.

10

MR. ARMSTRONG: All right.

MR. ARMSTRONG:

Q. Well --

15

THE COMMISSIONER: But you assumed, as I understand it, you assumed it was for medical services that was provided earlier than the date when he took the money from you?

THE WITNESS: Yes.

THE COURT: Either here or in St. Kitts?

20

THE WITNESS: Yes. Or money he would need when he was there.

THE COMMISSIONER: All right.

MR. ARMSTRONG: All right.

25

THE COMMISSIONER: And I gather you never discussed this with him since that day, Mr. Johnson, the

\$10,000.00?

THE WITNESS: I did ask him what it was for, you know, a number of weeks ago, and he sort of at first he couldn't remember and then he said, oh, I had to get some medication for my heel.

THE COMMISSIONER: For the heel.

THE WITNESS: For his heel.

THE COMMISSIONER: I see.

MR. ARMSTRONG:

Q. All right. Then Mr. Earl, apart from the \$10,000.00 payment, are you aware of any other monies that Dr. Astaphan may have received from Ben Johnson for services rendered prior to the middle of May, 1988?

A. I am not -- I am not really aware of any other money that changed hands. I know that there was a possibility of some money that came from various places that, you know, was supposed to be for Jamie, but, you know, that's only speculation.

Q. All right. Well, we may hear about it from other witnesses, but was there not another \$25,000.00 that was supposed to go to Dr. Astaphan for services that he had rendered prior to the middle of May, 1988?

A. Yes, okay, that was that was the money that was to come out of Japan connected with the Mazda,

with the Mazda group.

Q. All right. Were you involved in that in any way?

A. I believe --

5 Q. And I don't mean anything suspicious by that --

A. No, no, I think I may have delivered the bank draft or something down to Chris Astaphan to pass on to Jamie.

10 Q. All right. And Chris Astaphan is a --

A. Jamie's brother.

Q. -- brother of Dr. Astaphan.

THE COMMISSIONER: Drank draft drawn on what account?

15 THE WITNESS: I believe that came right out of money that came from Japan.

MR. ARMSTRONG:

20 Q. All right. Did you deliver a bank draft of \$25,000.00 to Chris Astaphan?

A. Yes.

Q. And your understanding was that that was for Dr. Astaphan?

A. Yes.

25 Q. And I am not as familiar as I should be

with drank drafts any that I have brought are for about
\$100 and you just fill in the name. Was the name Dr.
George Mario Astaphan filled in payable --

A. Yes.

5

Q. -- to him. All right.

THE COMMISSIONER: Drawn on what account?
You said money that came from Japan?

THE WITNESS: It was I believe a cheque
that came from Japan that was --

10

THE COMMISSIONER: And this draft was drawn
on the same bank then that issued the cheque?

THE WITNESS: Yes.

THE COMMISSIONER: I see. That issued the
bank draft.

15

MR. ARMSTRONG:

Q. All right --

THE COMMISSIONER: Who instructed you to do
that?

20

THE WITNESS: Larry Heidebrecht --

THE COMMISSIONER: I see.

THE WITNESS: -- instructed me to do that.

THE COMMISSIONER: Not Mr. Johnson?

THE WITNESS: No.

25

MR. ARMSTRONG:

Q. All right. In exhibit 132, the letter, in Section B, paragraph one, he says I have rendered these services to Ben since 1983, but for these purposes only, those services rendered by me as of mid-May 1988, are relevant. And the point I was getting at, perhaps erroneously I don't know, was that the \$25,000.00 that you had delivered to Chris Astaphan by way of a bank draft covered the period since 1983?

THE COMMISSIONER: I think what he is saying --

THE WITNESS: I can't answer that.

THE COMMISSIONER: -- here that for the purpose of the agreement, all he is talking about is mid-May because he wanted two months. This agreement is the retroactive to May.

MR. ARMSTRONG: No, I know it was. And he was only going to be paid from mid-May to mid-October \$10,000.00 a month.

THE COMMISSIONER: Per this agreement.

MR. ARMSTRONG: Per this agreement.

THE COMMISSIONER: All right.

MR. ARMSTRONG: But he makes the reference that he's been providing services since 1983.

THE COMMISSIONER: Yes.

MR. ARMSTRONG:

Q. And I was just trying to establish if I could through this witness that those other services since 1983 were paid by way of the bank draft of the \$25,000.00 that had been delivered to Chris Astaphan, but perhaps you can't tell us that?

A. I can't answer that.

Q. Well, did you know what the \$25,000.00 was for then that you delivered to Chris Astaphan?

A. I know that when the -- this -- the CTFA may be able to answer this one better than I can.

I know that there were negotiations made with the CTFA and Mazda through Charlie with reference to the Mazda group which I had very little contact with at this time because I had basically dropped out of the association with the sport on the level where I was dealing with either the OTFA or the CTFA on any of those matters.

THE COMMISSIONER: This \$25,000.00 was Mr. Johnson's money, obviously?

THE WITNESS: Not --

THE COMMISSIONER: Or was this Mazda money?

THE WITNESS: Okay, that was Mazda money.

THE COMMISSIONER: From Japan?

THE WITNESS: It was Mazda money that came

from Japan.

THE COMMISSIONER: For who, though?

THE WITNESS: Now, this is -- when Larry gave it to me, he said this is Mazda --

5 THE COMMISSIONER: Well, the bank draft was drawn in favour of whom?

THE WITNESS: Jamie Astaphan.

THE COMMISSIONER: From Japan? No, you drew the draft, sorry. Money came from Japan, right, I
10 guess --

THE WITNESS: Yes.

THE COMMISSIONER: I take it as a result of an appearance by Mr. Johnson in Japan?

THE WITNESS: Yes.

15 THE COMMISSIONER: And that money was payable to whom when it came to you?

THE WITNESS: Oh, I -- I don't recall whether that was payable to --

THE COMMISSIONER: Why would -- if Mr. Johnson -- I thought if Mr. Johnson appeared at a track
20 meet in Japan, that he would be given certain amount of monies to attend at that meet.

THE WITNESS: Yes.

THE COMMISSIONER: And was that money to be
25 shared by the Mazda group or was that for Mr. Johnson?

THE WITNESS: No, I don't think it was money that was given, you know, for attending a meet. I think it was money that was set up, you know, to come from the Mazda group.

5 THE COMMISSIONER: But you weren't a part of the Mazda group, though, were you, at that time?

THE WITNESS: I am sorry?

THE COMMISSIONER: You weren't part of the Mazda group then?

10 THE WITNESS: No, I wasn't part of the Mazda group.

THE COMMISSIONER: But you were looking after Mr. Johnson's affairs or helping him, I should say?

THE WITNESS: I was -- yes, helping him.

15 THE COMMISSIONER: I would assume, maybe wrongly, that the monies that were coming in, you described earlier, that once the -- sort of cash was pouring in, to use your statement, you suggested getting bank drafts instead of cash?

20 THE WITNESS: That was when Ben was getting his money in Europe from the meets, I suggested to him it was safer for him to --

THE COMMISSIONER: I understand --

25 THE WITNESS: -- convert it to bank drafts and carry it with him.

THE COMMISSIONER: But you were asked by Mr. Heidebrecht to draw on this money owing in Japan and you did that in favour of Mr. Chris Astaphan or Dr. Astaphan --

5 THE WITNESS: Yes.

MR. ARMSTRONG: Well, now just a minute, if I believe interrupt --

THE COMMISSIONER: -- or Dr. Astaphan.

MR. ARMSTRONG: It was delivered to Chris
10 Astaphan?

THE WITNESS: It was delivered to Chris, but it was for Jamie Astaphan.

THE COMMISSIONER: Payable to Jamie
Astaphan?

15 THE WITNESS: Yes.

THE COMMISSIONER: You don't know yet whose monies those were?

THE WITNESS: I was told by Larry. Now, Larry looked after, you know, basically, you know, the
20 money flow from the meets and from the commercial things. And Larry said, this money is for, you know, Dr. Astaphan, and should be sent to Dr. Astaphan. So, I sent it to Dr. Astaphan.

THE COMMISSIONER: I understand that, but
25 you don't know yet whose money you were sending? I would

assume it was Mr. Johnson's money?

THE WITNESS: Either Mr. Johnson's money or the Mazda group.

THE COMMISSIONER: I see.

5 THE WITNESS: Like it could have been the Mazda groups' money. You see, I believe the contract with Mazda was not specifically --

THE COMMISSIONER: What did you have in your possession at that time which was -- which
10 represented \$25,000.00, which -- not cash, you had what, a bank draft?

THE WITNESS: It was a cheque or a bank draft.

THE COMMISSIONER: And do you know who it was payable to you? It was just in your vault, I guess, was it?
15

THE WITNESS: I think it was handed to -- like Larry brought it to my house. And I believe I took it in to the bank and dealt with it the next day.

20 THE COMMISSIONER: I see. You don't know who the payee was?

THE WITNESS: That's what I can't recall.

THE COMMISSIONER: All right.

MR. LEVINE: Excuse me, sir. Do we have a date when all this occurred? I don't think the witness
25

has specified when he delivered the bank draft.

MR. ARMSTRONG:

Q. Well, could --

5 A. In my mind I can't even -- I can't even
peg, you know, the date on this.

THE COMMISSIONER: Well, was it after Japan?

THE WITNESS: Yes.

10 THE COMMISSIONER: So, are we talking about
June of 1988?

THE WITNESS: I think much of June they
were -- they were in Europe.

THE COMMISSIONER: No, they went to Europe
after coming back from Japan, were they not?

15 THE WITNESS: It would have been sometime
in that time period, yes.

MR. ARMSTRONG:

20 Q. Going back to the time frame, the meet
in which Ben Johnson pulled his hamstring in, was May the
13th.

THE COMMISSIONER: May 13th.

MR. ARMSTRONG:

25 Q. And they came back to Toronto. Now, I

don't know whether that included Mr. Heidebrecht or not,
but perhaps it did. They came back to Toronto around the
14th or 15th and --

5 THE WITNESS: That would be the logical
time frame for that.

THE COMMISSIONER: All right.

MR. ARMSTRONG:

10 Q. All right. In any event, just leaving
aside the mechanics of the \$25,000.00 and where it came
from and so on, we have covered that, did Larry
Heidebrecht tell you anything other than it was \$25,000.00
for Dr. Astaphan?

A. No.

15 Q. By that I meant did he say this is
\$25,000.00 for Dr. Astaphan for services that he has
rendered to certain people over the last three years or
whatever?

20 A. No, he just said this is -- this is
money that's to be given to Chris for Jamie.

Q. All right. Then --

THE COMMISSIONER: Had you met Chris
before? That's Dr. Astaphan's brother, is it? Did you
know him?

25 THE WITNESS: Yes, I had met him a couple

of times before.

THE COMMISSIONER: Did you deliver the draft to him or how did --

THE WITNESS: Yes, I did.

5

MR. ARMSTRONG:

Q. All right. Then I have you back now in the middle of May. I want to move you back in to the summer period of 1988, and in particular, about August the 6th I believe it is when the Mazda group and other Canadian track and field athletes were participating in the track meet in Ottawa known as the nationals. Did you attend the nationals in Ottawa in August of 1988?

15

A. Yes, I did.

Q. All right. And did you have occasion at the time of the nationals in Ottawa to have a discussion with Waldemar Matuszewski, Ben Johnson's therapist?

20

A. Yes.

Q. Tell us about that, please.

25

A. I think that this stemmed back to the end of June when we were sort of trying to iron out or sort out the compartments with which each person that was helping Ben would work from. Waldemar was to be the physiotherapist and sometimes he -- he would not

necessarily agree with what was being done with Ben's leg as far as Jamie and Charlie were, you know, happened to be concerned, you know, what he they happened to be dealing with.

5 And I had put the same ground rules down for Waldemar as for everybody else, that if he was upset or concerned about something, that as a group they sit down, discuss it, they not. you know, take it up, you know, with the press. And Charlie was concerned. There was, you
10 know, I think this again stemmed back to all the leakages this had come out, you know, previously. And Charlie had asked me to see if I could find out if, you know, Waldemar had been the source of, you know, some of the turmoil that was out there.

15 Q. All right. And what was Waldemar's reaction to this discussion that you had with him?

A. I think he felt a little bit hurt that Charlie would, you know, expect that, you know, maybe he had let something leak out that would be, you know,
20 detrimental to the progress of Ben. On the other hand, I think that he maybe didn't let something leak as much as often comments get misconstrued by the time they appear.

Q. All right. Now, in this discussion with Mr. Matuszewski at that time at the nationals in
25 Ottawa, was there any discussion with him about payment

for the services that he had rendered to the group of athletes, particularly Charlie Francis' sprint group of athletes?

5 A. Yes. I think again with the -- with the Mazda agreement and this -- this again, you know, as I say I was not really part of it, I wasn't too familiar with it, but with the Mazda agreement on the first year, there was a certain amount of the money that was to come from the Mazda organization down to the Mazda track club was to go to help supplement or to give Waldemar some 10 money for the services that he was giving to the athletes.

 And in the one year the money didn't come through. This caused a little bit of difficulty between Charlie and Waldemar where I think Waldemar wasn't really 15 too sure whether he should trust Charlie because things that Charlie had said would materialize didn't. And I felt -- I could feel for Charlie in this particular case, because I believe the money coming to the group was coming through the CTFA, and Charlie had overspent his budget and 20 CTFA extracted the amount from the Mazda money that had been overspent on airline travel. And when the money came down, you know, to Charlie or to the Mazda group, the money that Waldemar was supposed to have been getting, you know, just wasn't there.

25 So, the following year when Charlie had said

that in the contract with Mazda they would make a provision to have some money for the physiotherapist that would, you know, be working on keeping the group healthy, I am not sure whether Waldemar was totally convinced that this was going to happen or not.

Q. All right. And did it, in fact, happen? Was some money made available to Waldemar Matuszewski?

A. Yes, some money was made available to Waldemar.

Q. When was that?

A. That was at the National Championships and that was money that, you know, came from the Mazda group.

Q. All right. And that was initially \$18,750.00 U.S.; is that so.

A. I believe so.

Q. With an understanding that there would be a further sum of \$6,250.00 to make a total of \$25,000.00 U.S.?

A. Yes.

Q. And that was then a sum that came from the Mazda Company to Waldemar Matuszewski for services which he had rendered to the Mazda group of athletes?

A. Yes.

Q. And that would I take it be services that he rendered apart from the services that he was rendering to the national team of the Canadian Track and Field association?

5 A. I would assume that, but, again, you are talking about a time period where I had very little contact, you know. I did not know Waldemar except by name until that -- until that summer. And most of the work and most of the negotiating and the happenings from there was
10 between Mazda, the CTFA, and Charlie Francis.

Q. All right. Now, was the arrangement with Waldemar both as to money and both as to his undertaking to work within his field and not make comments beyond his field reduced to writing?

15 A. I wrote out an agreement.

Q. All right. I am going to then show you --

THE COMMISSIONER: Thank you.

20 MR. ARMSTRONG:

Q. -- a photocopy of an agreement on the letterhead of the Scarborough Optimist Sports Association with the date at the bottom dated August 6th, 1988, and a signature at the bottom. Is that the agreement that you
25 wrote out?

A. Yes, it is.

Q. So, all of the printing on the document is in your hand?

A. Yes, it is.

5 Q. And the signature at the bottom is whose signature?

A. That's Waldemar's.

Q. All right. Did Waldemar Matuszewski sign this agreement at the nationals after your discussion with him on August 6th, 1988?

10

A. Yes, he did.

Q. Perhaps you might just take a moment and read what the agreement says.

THE COMMISSIONER: Well, perhaps, we will take a break then at this stage, Mr. Armstrong, if that's convenient for you.

15

MR. ARMSTRONG: It is, thank you.

THE COMMISSIONER: Thank you. Short recess.

20

--- Short recess.

25

--- Resumed

---EXHIBIT 133: Letter dd August 6, 1988

5 THE COMMISSIONER: Mr. Armstrong, we're
dealing with Exhibit 133?

MR. ARMSTRONG: Thank you, Mr. Commissioner.

MR. ARMSTRONG:

10 Q. Just before the recess, Mr. Earl, I had
invited you, and I invite you again, to simply read
Exhibit 133, if you would, please?

A. "I, Waldemar Matuszewski, have received
from Ross Earl (Mazda Optomist Track and
15 Field Club), \$18,750 U.S. dollars as payment
for services to club athletes for the first
three-quarters of 1988.

The fourth and final quarter of \$6,250
U.S. dollars will be deposited with..." And
20 then it says lawyer's name.... "October the
15th, '88 at the Olympic Games.

This bonus money has been made
available to me through the Mazda Company
and in no small way due to the success of
25 the Desai Williams, Angella Taylor, Mark

McKoy and especially Ben Johnson.

I realize and accept my position in the structure around these athletes and will reserve my comments to my field and within my professional field of expertise.

I will make no comments or opinion statements on things that are not in my direct field and within my job description that could be construed as negative or damaging to the athletes or the club or any sponsors connected to them.

My position or job description with the club athletes is as a specialist in muscle massage and treatment to relax at muscles and prepare them for an optimum performance.

My directions come from Coach Charlie Francis and Dr. George Astaphan. I realize that in working as closely as I do with these athletes that I may, from time-to-time, be privy to private and confidential information which will be treated as such with respect to my clients and their unique positions in the world.

My actions are within the IAAF rules and I will not claim otherwise in the

future."

Q. All right. And what was that last reference to, "My actions are within the IAAF rules and I will not claim otherwise in the future"? Does that refer to something in particular?

A. I think that really referred to, you know, again some of the problems that were cropping up in the press and some of the concerns that nobody knew who was making comments that were managing to get themselves in print.

And Charlie had, you know, asked me, you know, just my opinions on the situation. Like, I think there was the comments on, you know, incorrect training methods. There were comments that were leaked out that, you know, that had commented on the possible use of drugs and that type of thing and I put that in to see if, you know, if Waldemar was using -- was using drugs or anything, then he would be breaking the IAAF rules.

And I think this was a concern that Charlie had expressed to me and I put that in to see if Waldemar would, you know, say, gee, I'm not going to sign that.

Q. All right. And did he freely sign it?

A. Yes. The only discussion we had was the, you know, when the last payment was due. He wanted all of the money in one lump sum and I said that I felt,

you know, good business practice, you didn't always pay the total amount before something had happened. I would like to have him paid the last part after, you know, the Olympic Games were over.

5 Q. All right. And did you, dealing with the last sentence of Exhibit 133, did you, in fact, ask him whether or not he had in any way been involved directly or indirectly with the administration of drugs to any of the athletes?

10 A. No, I didn't. This is a meeting in the stands at -- at the, you know, national championships. There were, you know, a number of people around us. I don't know that I would have asked that anyway.

15 Q. All right. Then, just so that I have it, the \$25,000 here appears to come directly from the Mazda company, right?

A. Yes. Yes, it's Mazda money.

20 Q. The only contracts I believe that we have heard about are contracts that Mazda had individually with each of the athletes such as Ben Johnson, Desai Williams, Angella Issajenko. Tony Sharpe is another who I believe had a Mazda contract. Mark McKoy we'll hear from, presumably, as this document may suggest, he also was under a Mazda contract, am I right?

25 A. That -- that I can't -- I can't verify

because, as I said, I, you know, dropped out of my association with the CTFA and the OTFA two years prior to this and whether the contract was made between the group or the individuals or with CTFA, I don't really know.

5 I know that -- I believe the Mazda company had to pay a sum of money to the CTFA in order to be able to negotiate contracts with the athletes. This is money that CTFA got but as far as the, you know, as for me being involved a great deal with the Mazda, you know, Optomist
10 Track and Field Club, I was not.

Q. All right. Well then, what you may be saying may indicate that you can't help me with these questions but I'll try them anyway, if I may?

A. Sure.

15 Q. My understanding on the evidence to date is that the Canadian Track and Field Association was a party to the endorsement contracts that were entered into by the various athletes and, indeed, I believe the Canadian Track and Field Association was a party to the
20 contracts with the individual athletes and Mazda.

Would that accord with your understanding of where the Canadian Track and Field Association enters the picture insofar as commercial contracts are concerned?

A. The reason I'm hesitating on that one
25 is that the Canadian Track and Field position had sort of

changed in the two or three years leading up to this point when the ARF account was originally set up, they took a very active role in all of the contracts and they were almost like one of three parties that, you know, held equal weight.

Q. Well, indeed, the contracts indicate they are one of three parties?

A. Okay. Well, I had discussions around this time that -- that would indicate that the Canadian Track and Field Association weren't quite so sure, that the negotiations and the contracts, in most cases, went on between agents and companies and athletes and after it was all finished then the CTFA just sort of endorsed it or, you know, said it was okay to go ahead.

Now, I'm not sure whether, you know -- like, they would have to speak to that, whether they had a reduced role to play or not. I know originally when I was involved for, you know, four years ago, the contracts would go back and forth between the CTFA and various people and there would be changes and lawyers would look at them and, you know, everybody and his brother signed the bottom of it by the time they were finished.

But I was removed from that for these last two years. I knew nothing of that except, as I say, there was some overtones that the CTFA were sort of shifting

feet or taking their position a little bit differently.

Q. All right. Then, in regard to this contract with Waldemar Matuszewski whereby he agreed to do certain things and you appear to have made available to him through Mazda, the \$25,000, was the Canadian Track and Field Association involved in any way?

A. You mean, were they involved with the writing of this letter?

Q. Were they involved with this deal?

THE COMMISSIONER: Was the payment -- did they know about this payment?

THE WITNESS: Yes. Yes, they did. Yes, the Canadian Track and Field.

THE COMMISSIONER: Well, I have interrupted but I'm puzzled. It says, "I, Walter Matuszewski, have received from Ross Earl, \$18,750..."and six -- another \$6,250 coming. It's a \$25,000 payment?

THE WITNESS: Yes.

THE COMMISSIONER: That was in addition, I gather, to what Mr. Matuszewski's salary was, he was getting paid.

THE WITNESS: That's correct.

THE COMMISSIONER: It looked like a bonus, the \$25,000?

THE WITNESS: Yes.

THE COMMISSIONER: And he said he received it from you. Where did you get \$18,750? Because you weren't really part of the Mazda group at all at that stage.

5 THE WITNESS: No, I wasn't.

THE COMMISSIONER: But you describe yourself as Ross Earl, Mazda Optomist, TC?

THE WITNESS: Yes, I looked at that with the brackets there. The ---

10 THE COMMISSIONER: Well ---

THE WITNESS: The position ---

THE COMMISSIONER: Where did you get the money? I can't follow this at the moment.

15 THE WITNESS: Okay. The money to pay the -- to pay that, came from the Mazda -- the Mazda money that came from Japan. Now, there was money that came from Japan.

THE COMMISSIONER: Why you were getting it, though? I don't quite understand it.

20 THE WITNESS: It was brought back. It was brought back by Larry Heidebrecht and he said this \$25,000 is to go to Jamie Astaphan and this \$25,000 is to go to Waldemar.

25 THE COMMISSIONER: It looks like they're each getting a \$25,000 bonus at this stage?

THE WITNESS: Yes, that's what it is.

THE COMMISSIONER: Why didn't you tell us that earlier about the other \$25,000? That's what it was for, wasn't it? It was a bonus?

5 THE WITNESS: It was a bonus, yes.

THE COMMISSIONER: I'm not saying there's anything right or wrong about it.

THE WITNESS: Yes.

10 THE COMMISSIONER: All right. And Mazda were paying Mr. Heidebrecht directly? I thought Mazda had sort of an over -- a longer term relationship with this group? They've been there for some years now.

15 THE WITNESS: No, no. Mazda, I believe, had been there for about two years. They came about the time ---

THE COMMISSIONER: What does Japan got to do with -- you are saying it was from Mazda in Japan?

THE WITNESS: Yes, Mazda in Japan.

THE COMMISSIONER: And that came to you?

20 THE WITNESS: Yes, it was brought to me by Larry.

THE COMMISSIONER: That would be about the same time, I guess, you also gave Dr. Astaphan the bonus.

THE WITNESS: Yes, it was.

25 THE COMMISSIONER: Well, wasn't this Ben

Johnson's money?

THE WITNESS: No, I think the indication that I was given, it was money for the Mazda group, not that it was Ben Johnson's money. It was money that was
5 built into the contract, I assumed, that was made between CTFA, Mazda and the Mazda Track Club.

THE COMMISSIONER: Well, was this authorized by the CTFA, these bonuses?

THE WITNESS: I can't answer that. I don't
10 know the answer to that question. I believe they were aware of them but again that's speculation.

THE COMMISSIONER: This money came in again by some sort of cheque from a Japanese bank, is that what it was?

15 THE WITNESS: Yes.

THE COMMISSIONER: And then it was a cash -- this looks like cash to Mr. Waldemar. Was it cash?

THE WITNESS: Yes, he asked for cash.

THE COMMISSIONER: So instead of drawing
20 something, as did you in favour of Dr. Astaphan, you gave him cash?

THE WITNESS: Yes. But I didn't want to give him cash without him at least signing a paper saying that he had it.

25 THE COMMISSIONER: No, I understand

that...saying that he had it. And the balance of the bonus was to come after Seoul, did I read some place, after the Olympics?

5 THE WITNESS: Yes, it was to come after the 15th of October.

THE COMMISSIONER: And was he paid?

THE WITNESS: Yes.

THE COMMISSIONER: And where did that money come from?

10 THE WITNESS: That was the remainder of the money -- the remainder of the \$25,000.

THE COMMISSIONER: Oh, I see. You had \$25' in hand with you gave him three-quarters of it?

THE WITNESS: Yes.

15 THE COMMISSIONER: And this was the Mazda sponsorship of the Mazda Optomist Club?

THE WITNESS: Of the Mazda group, yes.

20 THE COMMISSIONER: And I know that you've been well intended throughout and been trying to help those that you were close with before; I'm still puzzled why you would get this money?

THE WITNESS: I think ---

25 THE COMMISSIONER: To hand out. I'm not suggesting there's anything wrong with it one way or the other. I just find that ---

THE WITNESS: No. I think what it was is that, I guess it's like being the sweeper. There are a lot of things that were sometimes left undone that you, you know, that I would do to help, you know, Charlie or Ben or various people.

MR. ARMSTRONG: Well, just picking up -- well, I shouldn't interfere.

THE COMMISSIONER: No, go ahead.

MR. ARMSTRONG:

Q. Just picking up that thought, again like the Commissioner I'm not suggesting one thing one way or the other, but it would have seemed at this point, the logical person to have made the money directly available to Waldemar Matuszewski and indeed previously to Dr. Astaphan, would have been Larry Heidebrecht?

A. I'm not sure whether Larry was at the nationals or whether Larry was -- I believe Larry was in Europe at the time.

Q. No, no. The evidence is and will certainly be that he was ---

A. Was he at the nationals?

Q. ---at the nationals in Ottawa?

A. Okay.

Q. In any event, you, as you described it,

were the sweeper?

A. Yes, I think so.

Q. Sorry, I interrupted. I apologize.

THE COMMISSIONER: That's all right. Go
5 ahead, please?

MR. ARMSTRONG:

Q. Now, you say you got the -- going back
to the \$25,000 U.S. that Dr. Astaphan got?

10 THE COMMISSIONER: Was that about the same
time, the \$25,000 bonus for Dr. Astaphan?

THE WITNESS: Yes.

THE COMMISSIONER: So, there must have been
a fair amount of money coming in from Japan at that time?

15 THE WITNESS: Yes.

MR. ARMSTRONG:

Q. That was in the form of a bank draft?

A. It was a cheque or a bank draft, I
20 can't recall which.

Q. That was simply provided to you by ---

A. By Larry.

Q. ---by Mr. Heidebrecht?

A. Yes.

25 Q. Now, Mr. Matuszewski, on the other

hand, received cash?

A. Yes. He asked me for cash specifically.

Q. In U.S. dollars?

5 A. In U.S. dollars.

THE COMMISSIONER: So you must have cashed one of these Japanese cheques of some sort?

THE WITNESS: Yes.

10 MR. ARMSTRONG:

Q. That was my next question. Where did you get the cash?

A. I cashed the cheque that came in from Japan, so it was signed and cashed.

15 Q. And so was it just a bank draft drawn in blank or ---

A. No, I'm quite sure there was a name on it but, as I say, I don't recall what the name was. Whether it was, you know, Mazda Optomist or whether, you know, it was Larry Heidebrecht or whether it was, you know, something -- some other name.

20

Q. Well, if there was some other name, other than your own, you would have had difficulty cashing it?

25 A. It wasn't mine. It could have been

Scarborough Optomist.

Q. Did you cash that in Toronto or at a bank in Ottawa?

A. Oh, in Toronto.

5 Q. And you carried \$18,750 in cash down to Ottawa to give to Mr. Matuszewski?

A. Yes, I did.

10 Q. All right. I don't know whether it's curiosity of an impecunious lawyer or not not, but did you just ---

THE COMMISSIONER: Well, let's not overstate your position.

MR. ARMSTRONG:

15 Q. Well, did you -- did you have this in sort of thousand dollar bills or what? You must have had a whole suitcase?

A. I think they were hundred dollar bills.

20 Q. A hundred dollars bills? You must have had a whole suitcase full of hundred dollar bills?

A. I don't think it would have been a suitcase full.

THE COMMISSIONER: This doesn't say American. Was it American?

25 THE WITNESS: Yes, it was U.S.

THE COMMISSIONER: Does it say U.S? It said U.S. for Dr. Astaphan.

MR. ARMSTRONG:

Q. And on the second line on Exhibit 133,
5 \$18,750 U.S. dollars?

THE COMMISSIONER: I'm sorry. Thank you.

MR. ARMSTRONG:

Q. Now, just picking up a couple of
10 threads from the questions that the Commissioner is asking
and I suspect we've got it fully out, but this is less
than a year ago, do you not now remember whether the
Canadian Track and Field Association was made aware of the
arrangements whereby Mazda was paying a bonus of \$25,000
15 U.S. to Mr. Matuszewski and Dr. Astaphan.

Well, Astaphan wouldn't -- well, it would
be, it would be a bonus to Dr. Astaphan because he's now
under an agreement that the Canada Track and Field
Association is aware of?

20 THE COMMISSIONER: He said it was a bonus to
Dr. Astaphan.

THE WITNESS: Yes, it was a bonus. No, I'm
not aware of, you know, whether they were privy to that
information or not. I certainly didn't contact them.

25

MR. ARMSTRONG:

Q. Well, taking the earlier document that, Exhibit 132, which is the letter from Dr. Astaphan to you setting out the arrangement to pay his travel expenses and the arrangement to pay him \$10,000 a month from mid-May to mid-October, that document was filed with Steve Findlay of the Canadian Track and Field Association?

A. Yes.

THE COMMISSIONER: Because I think those monies were coming out of the ARF account?

THE WITNESS: These monies were coming out of the ARF account. I believe that the way Larry explained it to me was that if the \$25,000 that was a bonus went into the ARF account and came out, then it was classified as Ben's money. But, it wasn't Ben's money, it was a bonus for working with the Mazda club.

MR. ARMSTRONG:

Q. I see.

A. If it went into Ben's account and then came out, then there would be certainly complications as to, you know, the tax implications because if it went into Ben's account then it would be Ben's money. When it came out, he would be liable to pay, you know, taxes on it and it wasn't Ben's money.

It was, you know, Mazda money, like the Mazda Track Club money.

Q. All right. And I suppose there may be one or more other witnesses that we should await and get this from, but what may appear to be happening here is that by the spring of 1988 it was obvious that Ben Johnson was a very successful athlete and there were some people who were close to him who may have felt that they had contributed to his success and were suggesting that they should be paid more than they had to up to that point in time. Was that really not what's happening?

A. Again, that's -- you know, that's a logical, you know, summary, I would think.

Q. And is it not so that, particularly Waldemar Matuszewski was one who really thought that his services had gone unrecognized from a financial point of view?

A. Yes, I think I referred to that in the preceding contract with Mazda, that Waldemar was to receive bonus money which didn't come through and he was quite upset, you know, about that. So when this bonus money was to come through he was really making sure that, you know, it was there for him.

Q. All right. Then on August the 6th, in Ottawa, you also prepared a document that you had Dr.

Astaphan sign, am I right?

A. Yes.

Q. And I am just going to put that in front of you. And this is a document on similar letterhead as Exhibit 133, the Scarborough Optomist Sports Association with the date August 6, 1988 and a signature on it. Whose signature is that?

A. That's Jamie Astaphan's.

MR. REGISTRAR: Could we then have that marked as Exhibit 134, Mr. Commissioner?

THE COMMISSIONER: Yes, thank you. 134.

---EXHIBIT NO. 134: Letter dd. August 6, 1988

THE REGISTRAR: Excuse me, Mr. Armstrong. Is that attached to 133?

MR. ARMSTRONG: Your copy may be. We separated them out, I'm sorry.

THE REGISTRAR: All right.

MR. ARMSTRONG:

Q. Then, would you read Exhibit 134, please, Mr. Earl?

A. "I, Dr. George Astaphan as the chief physician of Ben Johnson and the person most

responsible for his physical and mental wellbeing, will make statements only which pertain to my professional position about the athlete.

5 I understand the job description and can fulfill my commitment to Ben. I realize that in working as closely as I do with these athletes, I may find myself from time to time to be privy to private and
10 confidential information which will be treated as such with respect to my client and his unique position in the world.

15 My actions are within the IAAF rules and I will not claim otherwise in the future".

Q. All right. Now, what was the purpose of preparing this document and obtaining the signature of Dr. Astaphan on it?

20 A. Basically, the same purpose as the one for Waldemar. You know, the ---

THE COMMISSIONER: But you didn't get a receipt from Dr. Astaphan for the money, though, this time?

25 THE WITNESS: No. No, the money that went to Dr. Astaphan, I believe, was -- was a bank draft or a

cheque and there was a receipt that was with that. The other one was cash.

THE COMMISSIONER: Thank you.

THE WITNESS: I think, again, these letters
5 were initiated probably in July. I wrote them after I drove up to Ottawa, after a bingo on a Friday night.

But they were, you know, with concerns to the group that, hey, we're all going to do as we've been asked and concentrate on our own jobs and we're not going
10 to be going out and saying things that, you know, that tomorrow that we say we're not saying today.

Q. All right. And did -- was there any discussion with Dr. Astaphan concerning this document when he signed it?

15 A. No.

Q. And was it similarly signed in the stands at the ---

A. Yes.

Q. ---at the track and field centre in
20 Ottawa where the nationals were being held?

A. Yes, it was.

Q. Now ---

THE COMMISSIONER: These undertakings really cement the understanding that you had with him orally?

25 THE WITNESS: Yes, because we had nothing

in writing and there were all sorts of, you know, comments going around that Sports Illustrated was printing stuff that was coming from sources close to Ben and you were -- you were getting all these reliable sources close to Ben that were printing this and printing that and we couldn't figure out, you know, who these sources were.

We had possible suggestions but I think it was to make the person think a little bit more if they happened to be one of the sources that, hey, I signed an agreement that I wouldn't do this so....

THE COMMISSIONER: You're trying to get this one happy family, in a sense?

THE WITNESS: Yes.

MR. ARMSTRONG:

Q. All right. Now, I don't know whether there's anything significant in this or not but I'll ask it, the group included Dr. Astaphan as the physician, Mr. Matuszewski as the therapist, Mr. Francis as the coach, Mr. Heidebrecht as the agent.

Now, did Mr. Johnson and Mr. Heidebrecht sign similar undertakings as these?

A. No.

Q. Any particular reason for that?

A. I guess I ran out of time.

THE COMMISSIONER: Or Mr. Francis?

MR. ARMSTRONG: Sorry?

THE COMMISSIONER: Or Mr. Francis?

MR. ARMSTRONG: Oh, if I said Mr. Johnson

5 ---

THE COMMISSIONER: You did.

MR. ARMSTRONG:

Q. ---I meant Mr. Francis, sorry?

10 A. No.

Q. You ran out of time?

A. I ran out of time.

Q. All right. Then, this is August the
6th. We know that the 100 metre final in the nationals
15 was on August the 6th and perhaps the women's final events
that Angella Issajenko and others were involved in were
also on August the 6th, I just can't remember.

But in any event, the meet for the sprint
group of athletes was over on August the 6th. We've heard
20 that it was the following day that they came back to
Toronto and then flew to Sestriere in Italy. You didn't
go to Sestriere or any of the other places in Europe that
they went to in August of 1988, I take it?

A. No, I'm not sure whether I even stayed
25 for the second day of the meet. I believe I drove back to

Toronto, you know, Saturday night.

Q. Then, Mr. Earl, the group came home. Angella Issajenko came home around the -- I forget, I think about the 19th or 20th of August. Then the remainder of the group came home from Cologne on August the 23rd and they were in Toronto training at York until September the 6th when they took the first leg of their journey to Seoul by going to Vancouver to the staging camp.

10 Were you involved with the group in that period of time in any significant way?

A. Not with the group as such. I was involved a little bit with Ben because this was the time period that he wanted to buy his Ferrari.

15 Q. I see. And did he, in fact, in that time period buy his Ferrari?

A. Yes, against my better judgment but he wanted the car.

Q. All right.

20 THE COMMISSIONER: Did you go with him?

THE WITNESS: Did I go with him?

THE COMMISSIONER: Yes?

THE WITNESS: No.

25 THE COMMISSIONER: I mean, when he bought the car?

THE WITNESS: No, I didn't. As a matter of fact, I asked Ben, you know, to delay the purchase of the car and he said, no, that he wanted it. And he just went down and bought it.

5 THE COMMISSIONER: Would that come out of the ARF account?

THE WITNESS: Yes. I think a portion of it came out of the ARF account. I think it was like a down payment that was made on the car and then he financed part
10 of it.

THE COMMISSIONER: Thank you.

MR. ARMSTRONG:

Q. Then apart from whatever discussions
15 you may have had with Ben Johnson about the acquisition of the automobile, did you have any other involvement with either him or any other members of the group prior to their departure for Seoul?

A. I can't recall anything that stands out
20 in my mind, except that there was a little bit of concern going around the group -- I talked to Charlie, I'm sure, you know, on the phone and I think there was a bit of concern going around the group that Ben wanted to go directly to Seoul. He didn't really wish to go to Japan.

25 And I think that was put down to the fact

that he was always, you know, so actively received in Japan that he was just a little bit -- he wanted to avoid, you know, the big crowds and that and sort of concentrate on, you know, what he was going to be getting ready for at Seoul.

And he was asking the CTFA for permission to, you know, miss the Japan phase of the trip. But I'm not even sure what happened there. Again, that was something which I was not, you know, a part of.

Q. Did you go to either Vancouver or Japan or Seoul?

A. No.

Q. Then I just wanted to go back for a moment, if I could, to May of 1988, prior to the time that Ben Johnson went down to St. Kitts. And he came to you to ask you for the \$10,000 cash which he took to -- or you believed he took for Dr. Astaphan?

A. Yes.

Q. You mentioned that some time ago you had a discussion with him about it and he said -- this is a telephone discussion, I take it?

A. No. It was, you know, person to person.

Q. And you asked him what the \$10,000 was for?

A. Yes.

Q. When was that?

A. I believe that was a month or so ago.

Q. And as I understand what you said in
5 response to questions from the Commissioner this morning
that the \$10,000 -- he said the \$10,000 was what, for ---

A. For medication or for something to do
with his heel.

Q. And we know from evidence that we've
10 heard already in this hearing, I believe from Mr. Francis,
that he received a cortisone shot for some injury to his
heel three or four days prior to running in Seoul.

Did you ask him any more about that? Did he
say what kind of medicine would cost \$10,000 to look after
15 his heel back in May of 1988?

A. No.

THE COMMISSIONER: I'm sorry. I think the
discussion you're now mentioning is one you had recently
with Mr. Johnson?

20 THE WITNESS: Yes.

THE COMMISSIONER: And when Mr. Armstrong
asked you earlier about what you asked at the time that he
requested the payment, you said ---

THE WITNESS: I didn't ask.

25 THE COMMISSIONER: He didn't say what it was

for at all?

THE WITNESS: No. He just said it was money that he needed for Jamie.

THE COMMISSIONER: At that time he didn't mention what it was for?

THE WITNESS: I'm not sure whether he told me he owed it to Jamie or he needed it for Jamie. It was just....

THE COMMISSIONER: But he didn't mention at that time that it was either for medical supplies or for the sore ankle.

THE WITNESS: No, no.

THE COMMISSIONER: Did he have a bad ankle in May anywhere?

MR. ARMSTRONG: Heel.

THE COMMISSIONER: A bad heel, I'm sorry.

THE WITNESS: That I can't answer. I don't know whether he had.

THE COMMISSIONER: All right, thank you. Sorry.

MR. ARMSTRONG:

Q. All right. And well, I think you've already told me that, without any explanation, in May of 1988, you gave him the \$10,000?

A. Yes. Well, it was Ben's money and, you know, from time-to-time Ben would come, if I had, you know, money of his and if he wanted it, I gave it to him.

Q. That money, however, was money that you
5 held, though, that from time-to-time you would transfer the cash to the Canadian Track and Field Association?

A. Yes.

Q. And was the Canadian Track and Field Association made aware that the -- that that \$10,000
10 payment had gone, in cash, to Ben Johnson for Dr. Astaphan?

A. Not by me.

Q. And was it acceptable, so far as you understood it within the terms of the arrangement, that
15 that you could give Ben Johnson cash of -- amounts such as \$10,000?

A. We didn't have an agreement. You mean between myself and the CTFA?

Q. Yes?

A. We didn't have an agreement such as
20 that. When Ben brought money to me, if he asked me to hold it for him, I held it for him. If he asked for it back, I gave it to him back. I gave it back to him.

Q. The monies, of course, that he brought
25 to you would be sums of money that he received either in

cash or through a bank draft that he received when he would attend at track meets in Europe and other places for performance fees?

A. Yes.

5 THE COMMISSIONER: Or attendances or commercials?

THE WITNESS: Yes, or, you know, any of the activities that he did that he was paid for.

10 MR. ARMSTRONG:

Q. And under the rules of the CTFA, was that money that he gave you in cash or bank draft, was that intended to go into the athlete's reserve fund?

15

20

25

A. I would have to be assuming on that answer. I would assume so.

Q. I take it that when he asked you for the \$10,000 in May of 1988 for Dr. Astaphan, it didn't
5 occur to you that he may have been asking for a sum of money that would be used to buy drugs?

A. No, I didn't know how long he was going to be going down on this thing with Jamie. I didn't know whether this would be money for, you know, just for Jamie
10 or whether it would be for accommodations or, you know.

THE COMMISSIONER: In other cases when he asked you for cash which you had in your safe, was that a vault at home that you kept this money?

THE WITNESS: I'm sorry?

15 THE COMMISSIONER: You told us you kept considerable amounts of cash that was given to you--or drafts. Was this at home or--

THE WITNESS: Yes, this was at home. I had a safe in my home.

20 THE COMMISSIONER: And in other cases when he asked you for cash, would he tell you what it was for?

THE WITNESS: Yes, he would often -- well, he told me this time it was for Jamie. He would come and now we would have to go back a couple of years prior to
25 that. I'm trying to say that he needed money for

insurance or whatever. If I had it, I would--you see, sometimes the money that was being sent down for the CTFA was being sent down very slowly, and if you had an expenditure like insurance for a vehicle that was due in January, by the time you got your money from the CTFA, it might be August. By then your insurance would be cancelled and you would be driving--

THE COMMISSIONER: But these monies that were available were actually in your residence?

THE WITNESS: Yes, this money was. But what I am trying to say is this is part of the reason why, you know, Ben had some money. He would sometimes delay sending it to the CTFA because he would cover bills and then notify them that he would need--this is what the money was spent for so it would be the same as putting it in and drawing it out.

THE COMMISSIONER: Well, that would be on the premise that it was accounted for?

THE WITNESS: Yes.

MR. ARMSTRONG:

Q. Now I think in response to questions by the Commissioner this morning before the morning break, you said that when you spoke to Ben Johnson a month ago, that you asked about the \$10,000. He didn't remember it

at first, but then thought about it and said he thought it was for medication for his heel?

A. Yes.

Q. And you have told me now that you didn't question him any further about that?

A. No.

Q. Did it not then occur to you that \$10,000 would be an awful lot of money for the purchase of medication for an injury to the heel?

A. Well, that would be a logical assumption, I guess, but I think on the opportunity that I was speaking to Ben, I only saw him for a matter of a minute or two.

Q. And in any event, that was the end of that conversation on that subject. You didn't question him anymore and he didn't volunteer any further information?

A. Yes, I had had limited contact with Ben from the time that he got back from the Olympic Games.

Q. Those are all the questions I have, Mr. Commissioner. Thank you.

THE COMMISSIONER: Thank you. Mr. Bourque? Any questions?

MR. BOURQUE: Well, Mr. Commissioner, I do have questions but I'm wondering if I may have the lunch

recess to consult with my client about matters relating to the reserve fund.

THE COMMISSIONER: All right. Mr. Pratt, do you have any questions?

5 MR. PRATT: I have a few, Mr. Commissioner.

THE COMMISSIONER: Can you proceed now, please.

MR. FUTERMAN: Excuse me, Mr. Commissioner. I thought the procedure is that Mr. Sullivan would--

10 THE COMMISSIONER: I'm sorry, Mr. Sullivan. Do you want to re-examine now? Thank you very much. I'm sorry. It was my fault. I'm forgetting about the two stages here. Proceed, Mr. Sullivan.

MR. SULLIVAN: I would prefer I do it now because I don't anticipate that I will be that long.

15 THE COMMISSIONER: All right, thank you.

EXAMINED BY MR. SULLIVAN:

20 Q. Mr. Earl, I just want to go over a little bit the handling of the money because it seems to be the cause of some misconception. Are you aware of when the Athletes' Reserve Fund was established?

A. I believe it was established about 1981 or '82.

25 Q. And at the time that it was

established, are you aware of whether some of these--the athletes that were in your group already had contracts, commercial contracts for endorsements?

5 A. We had commercial contracts prior to the establishment of the Athlete Reserve Fund.

Q. And who would those contracts have been with?

A. The company?

Q. Yes.

10 A. They were with the Adidas company. I believe Angella had--she may have had a donation from a construction company.

Q. And these would be for endorsing their products?

15 A. I think with the Adidas, yes, it would be for an endorsement of the product or wearing of the product. I think in the case of the construction company, it was just someone that made a contribution towards her training program.

20 Q. And since there was not an Athlete's Reserve Fund, how were the funds that they would receive pursuant to those contracts handled?

A. Well, what I did is when the athletes were at a stage where something like this happened, we
25 opened up a bank account for them and they just deposited

the money and they used it for their travel or for their accommodations or that type of thing, and each athlete had an individual bank account at this time.

5 Q. And were they required to account to anybody for those funds at that time to the best of your knowledge?

A. No, but when the Athlete Reserve Fund was set up, we were asked to send all of the monies that were in those funds to CTFA because they had the Athlete Reserve Fund set up and working and the monies would now go through the CTFA.

10 Q. But prior to that, prior to the establishment of the Athletes' Reserve Fund, the athletes would simply come to you, would they, and ask you for money as they needed it?

A. Yes.

15 Q. And in 1981, the Athletes' Reserve Fund was established?

A. I say at some time around that. I'm not too sure.

20 Q. Around 1981.

A. Yes.

Q. And at that time the funds that were received by the athletes for commercial endorsements and meet performances and that sort of thing were to be paid

25

into the ARF?

A. Yes.

Q. Which is controlled by the CTFA?

A. Yes.

5 Q. And disbursements were to come out of the ARF on behalf of the athletes?

A. Yes.

Q. Did they have to make an application to the CTFA for each one?

10 A. Sometimes they did. Other times they would make an application where they would have a monthly allowance that would, you know, automatically be sent wherever they wanted it to be sent. Like, it could be sent to them, to their account or to--for a while we kept
15 the accounts open at the bank, and I know that Angella used to have her money and it would automatically come into her account.

Q. This was around 1981. What sort of money would we be talking about at that time?

20 A. I believe you are talking about without the bonus money, some of them were getting \$250 month, 350, 450, 500. It was basically those types of amounts, and then there was bonus money connected with it if they won the Commonwealth Games or, you know, positioned
25 themselves at the end of the year at a certain level in

the world, but most of the bonus money was usually payable, like, at the end of the year.

Q. I see. And at some stage after 1981, the amount of money that starts to come in on behalf of these athletes begins to be increased dramatically, I take it, from what you have told us earlier?

A. Yes, I believe with Milt Ottey, it increased to somewhat--

THE COMMISSIONER: We don't need the exact amounts.

A. About \$2,000 a month, but I mean, depending on what you call larger amounts, it was away from the 250 and the 500.

MR. SULLIVAN:

Q. How would the funds come? From either the advertiser or the company that was contracting for the commercial endorsement or the meet officials? How did the funds actually get from those sources to the athletes?

A. You mean prior to the ARF account being set up?

Q. Yes.

A. They would be by cheque.

Q. Payable to the athlete?

A. I'm not sure if it was payable to the

athlete or whether it was the athlete's last, Scarborough Optimist. I think there was some type of a control mechanism. The companies were always a little bit concerned that although you had a contract with an athlete, the athlete might change his mind the day before the Olympic Games and switch to another company, and there was, you know, how to set controls up on this. So the companies were definitely interested when the CTFA got involved, and when the CTFA became part of the, you know, ratifying group for the contract. If an athlete, for example, ran for Company A that was being sponsored for two or three years and the contract wasn't, you know, completed, the athlete could not switch in midstream to another company because the sports governing body had the power to withdraw them or not enter them in the Olympic Games or major competitions.

Q. Well, I'm trying to establish how the funds were paid to the athlete prior to the establishment of the ARF. I think you told us that it was either by a cheque drawn either to the athlete or the athlete in the Scarborough Optimists. After the time that the ARF was established, how were the funds paid by meet officials and endorsers and that sort of thing?

A. They were paid directly to the CTFA. Now, I don't know whether it was a wire, whether they were

wired or whether it was a payment by cheque. I can't answer that.

Q. Isn't it true that a lot of cash was paid to the athletes on occasion?

5 A. Where the cash came in was when the athletes competed in Europe, the European meet promoters paid cash, and I know there was one occasion where one of our athletes had, you know, a fairly substantial amount of cash stolen from him and this was the time that I told Ben
10 that, you know, the best hedge on that, I would think, would be to use the bank draft or the money order and mail it back to themselves.

Q. And didn't they, in fact, bring a lot of it to you?

15 A. Ben brought a lot of it to me. The other athletes usually didn't.

Q. And what year would that be that Ben would start to bring you cash?

A. It would be probably '85, '86.

20 Q. And I think you told the Commissioner earlier that you deposited that in a vault at home and then you would send it to the--

A. I would send it to the CTFA.

25 Q. And how would you decide when to send the money to the CTFA?

A. The CTFA would--they would contact me and tell me, you know, give me the bank account number, where to send the money, and I was always a little leery. I wanted to make sure that, you know, we had the right
5 amount to send and Larry Heidebrecht--like, I just didn't want to send money without knowing what it was. So it was done in combination with Larry Heidebrecht and Ben and the CTFA.

Q. Well, when you say without knowing what
10 it was, you mean without knowing what--

A. If somebody came and handed me \$15,000 and said this was for meets in Europe, you know, it would be nice to know which meets in Europe and how much for each one because that's the question that you would
15 eventually get asked.

Q. And would Ben ask you from time to time for cash for other purposes?

A. Yes, he came to me on several occasions when he was, you know, short money and would ask for cash
20 or sometimes he had debts to pay.

Q. And did you think you had any obligation at that time to ensure that adequate or the proper amounts of money were being sent to the ARF?

A. I kept cautioning Ben to say, you know,
25 Ben, the money has to be there when we have to send it to

the ARF, and he said that it would be fine. There would be enough money there for the ARF.

Q. So the ARF would tell you how much money to send to them?

5 A. Yes, and that was based on the contracts that were set up. You see, I wasn't a part of the contract structure so I didn't know, you know, what types of money were involved. All I know was occasionally Ben would bring me some and say would you keep this for
10 me. Now eventually when he got his house on Blacktoft, he bought a safe and would keep the money himself.

Q. Were you always able to send the amounts of money that the ARF asked for? In other words, did you always have that amount of money on hand?

15 THE COMMISSIONER: What monies are you talking about?

MR. SULLIVAN: I'm talking about the money, sir, that he was holding for Ben which was ultimately to be sent to the ARF.

20 THE COMMISSIONER: There were two sources. One would be in cash and one would be a cheque. Is that right? You would have two different types of funds? Some draft cheques--

THE WITNESS: Some would be in draft and
25 some would be in cash. Well, Ben and I would on one or

two occasions, went around to the bank with the drafts, with the--what do you call them, the traveller's cheques and whatnot, and we sat at the bank manager's desk and we endorsed all of the stuff and sent what was required up to the CTFA. There was one occasion I know that we were short, you know, 12 or 14 or \$16,000 and we had to explain where it went.

MR. SULLIVAN:

Q. And did you?

A. Yes, we did.

THE COMMISSIONER: The amount of money that the CTFA would know would be only those for a contract, commercial contracts?

THE WITNESS: For commercial contracts or for meet appearance fees as they were notified. And in this particular case, the money had been taken with Ben to go to Seoul. At least some of it had gone to Seoul and some of it would have been the other 10,000.

Q. Well, it's fair to say that probably early in 1980, perhaps late 1970s, you were handling a good deal of the athlete's money. It was being funneled through you if it wasn't paid directly to the CTFA?

A. Yes.

Q. And that had been going on for a long

time?

A. Yes.

Q. There was some discussion here earlier about the \$10,000 that Ben came and asked you for and took to St. Kitts in which he said was for Dr. Astaphan. That was not an unusual thing for Ben to come and ask you for that kind of cash?

A. No. No, it wasn't that unusual.

Q. And in fact throughout 1988, didn't he ask you for substantial sums of cash on several occasions?

A. Yes, he did.

MR. FUTERMAN: Excuse me, Mr. Commissioner. This is not cross-examination. It seems to me that Mr. Sullivan is putting the answers in this witness' mouth. I don't think that's appropriate.

THE COMMISSIONER: I just think he is exploring matters which were not specifically covered before.

MR. FUTERMAN: This is supposed to be examination-in-chief, not cross-examination.

THE COMMISSIONER: Right.

MR. SULLIVAN:

I'll take my friend's point, sir.

Q. At the time in August or I guess it was

May of 19--perhaps you can refresh my memory. When in 1988 was it that the \$25,000 was delivered to you by Mr. Heidebrecht with instructions to send it to -- to deliver it to Chris Astaphan?

5 A. I think the money was brought to me after the group came back from Japan. They brought the cheque, their cheques back with them.

 Q. And do you have any idea at that time how many of the sprint groups Dr. Astaphan was treating at
10 that time?

 A. I think he was looking after most of the Mazda group.

 Q. How many athletes would that be about?

 A. That would probably be 14, 15, 16.

15 Q. And you don't know whether the \$25,000, was it for all of them or some of them or just one of them?

 A. It was for the Mazda group, so the Mazda group I assume was all of them.

20 THE COMMISSIONER: Well, all of them. He names just a few here, doesn't he? Would that be the same group?

 THE WITNESS: I think they were specifically saying that--I wrote that letter.
25 Specifically saying that those were some of the major

people that caused the bonus to be, you know, to be forthcoming.

MR. SULLIVAN:

5 Q. All right. Let's go back to the period of 1984 when you amalgamated. Your organization amalgamated with York University. How was your club funded just prior to the amalgamation with York University?

10 A. Primarily by bingos.

Q. And did you receive any funds from the CTFA?

15 A. The club didn't receive any funds from the CTFA. A couple of the coaches were receiving honorariums, and Charlie Francis was receiving his salary and a centre budget, but that was not club stuff.

Q. As a proportion of the total funding of the club, what would you say that the CTFA's involvement would be by paying these coaches roughly?

20 A. Probably 15 or 20% maybe.

Q. And then I think you told us earlier that you were I guess forced to amalgamate with York University under the threat that you would be rated a B club?

25 A. Yes, and programs that were going to be

initiated wouldn't be available to us.

Q. And that was at a time when you had about 350 athletes?

A. Yes.

5 Q. 35 coaches?

A. Yes.

Q. And 29 of your athletes were carded?

A. Yes.

10 Q. They told you as--the representative from the CTFA told you at that time that the reason that they were asking you to amalgamate was because it was their opinion that the club system was not working?

A. Yes.

15 Q. Is it fair to say that at that point your club was probably the most successful track and field club in the country?

20 A. Yes, and we had pointed that out. I kept saying that, you know, it's one thing to say the club system isn't working, but what are we doing? And they kept saying well, it's not working anyplace else. So we are going to take this other route to work with three universities.

25 Q. Do you know whether any other clubs in the country were asked to amalgamate with universities at that time?

A. Not to my knowledge.

Q. After the amalgamation, they took--the amalgamated company took all of the over-17 athletes which included your carded athletes?

5 A. Yes.

Q. And I think you told us earlier that Mike Dixon assumed what had previously been your responsibilities with the exception of fundraising?

A. Yes.

10 Q. Did you continue to fund raise through that period?

A. Yes.

Q. And did you continue to operate the Scarborough Optimists Sports Association?

15 A. Yes, we did.

Q. And were you an active coach for the Scarborough Optimists Sports Association during that period?

A. Yes.

20 Q. What form did the CTFA funding take after the amalgamation? Did they increase their funding?

A. After the amalgamation, I don't think there was any change with the exception that they did pay the salary to Mike Dixon.

25 Q. There had been no other substantial

change in their funding?

A. No.

Q. You were continuing to fund that program through your bingo operation?

5 A. Yes.

Q. And you told us that the split really occurred in about 1986 when you had a confrontation with the then president of the CTFA? You expressed some concerns about commitments that were not being kept?

10 A. Yes.

Q. Would you give me an example of what sort of things you were concerned about?

A. One of the key things was that there was to be \$1,000 for each carded athlete that would come down to the club and that could be money that would be paid to the coaches or the coaches and the club. We were told it was to be split between the coaches and the club. We had talked to the coaches and told them that the club was not interested in taking any of that money, that the money would go to the coaches, so we were expecting, you know, about \$29,000 to come down that would go to the coaches and it didn't materialize.

15

20

Q. So you--

A. The coaches, by the way, had been informed by the CTFA that this would happen. I mean, they

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had been informed earlier in the year that this is money that would be forthcoming to them at the end of the year. And as September and October drew around, the coaches were starting to, you know, question. Has this money come
5 through yet, is it coming? And this was one of the concerns that I had that I spoke to the president and they just said well, we are sorry it just doesn't exist. It won't happen.

Q. Are you talking about all the coaches
10 now or any particular group?

A. Any of the coaches that had carded athletes that would have the money. Now the money, as I say, was to go to the club and it was to be, you know, because of the amount of carded athletes that you had.
15 But there was not necessarily, you know, a tight -- that it had to be, you know, given to a specific coach.

Q. Well, it seemed that the money was going to the coaches of the carded athletes?

A. Yes, or see, what happened is that we
20 had our system set up a little bit like a school system where, you know, Coach A would develop the athletes and feed them to Coach B. Coach A very seldom got any remuneration because Coach B had the athletes when the athletes were performing and doing well. And this was an
25 opportunity for Coach B to sort of pass the money down the

line to the people that were feeding the athletes to him, especially if he happened to be, you know, in a paid position as Charlie was.

Q. So there didn't seem to be any
5 resolution to your concerns and you resigned?

A. Well, we set up a meeting for
September, and they couldn't make it. It was changed to
October, and then it was moved from early October to late
October, then November, and I think we finally had the
10 meeting in December and that's when I got the, you know,
chicken in the pot letter in early January.

Q. And then I think you told us that
several splinter groups were created after your
resignation?

A. Yes. That I think was partly through
15 my frustration where I wasn't prepared to try and take the
pieces and put it back together again.

Q. And one of those groups was the Mazda
group?

A. Yes.

Q. Other than a fundraising function, have
you ever had any administrative or official role to play
with the Mazda Optimists?

A. No.

Q. So I take it from what you have said,
25

that you really have had no administrative or coaching
role to play with the over-17s since 1984 when they
amalgamated with the York University club?

A. That's true.

5

Q. That's all.

THE COMMISSIONER: Thank you, Mr. Sullivan.
We will adjourn now to 2:30.

THE REGISTRAR: Commission will adjourn
until 2:30.

10

---Adjournment.

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---Resumed.

THE COMMISSIONER: Mr. Earl, just before
other counsel ask questions, might I just ask a few
questions to clarify something that was perhaps confusing
5 this morning. The Athletes' Reserve Fund I take it is
money which is that of the athlete?

THE WITNESS: Yes.

THE COMMISSIONER: As long as he is in this
"amateur status?"

10 THE WITNESS: Yes.

THE COMMISSIONER: The money is held for
him in trust; is that right?

THE WITNESS: Yes, that's right.

15 THE COMMISSIONER: But that's only for the
athletes?

THE WITNESS: Yes.

THE COMMISSIONER: Now I gather Mazda was
contributing money to the club as well as individual
endorsements. Is that what your understanding is?

20 THE WITNESS: Yes.

THE COMMISSIONER: So if money is paid by
Mazda as part of the sponsorship which is assigned for,
say, a coach or a doctor or a therapist, that would not be
the business really of the CTFA?

25 THE WITNESS: No, and that would not go

through the ARF account at all.

THE COMMISSIONER: Would not go through the ARF account. So that the monies that were paid out to Dr. Astaphan and Waldemar Matuszewski would not be monies
5 which would normally be reported to the CTFA because it's not money for the athletes?

THE WITNESS: Not necessarily. Yes, that's correct.

THE COMMISSIONER: I've got that picture
10 right. And I take it, so we can get this into the context, I think you said earlier that although you were not formally part of the Mazda group, you have retained your close relationship and friendship with the young athletes and Mr. Francis with whom you worked with so many
15 years yourself?

THE WITNESS: Yes, I have.

THE COMMISSIONER: And throughout this period, you were acting as a friend of the group?

THE WITNESS: Yes, that's correct.

20 THE COMMISSIONER: And a volunteer?

THE WITNESS: Yes, definitely.

THE COMMISSIONER: And I gather from what you have said, in this period of June of '88 in that summer, as an old friend, you were concerned about this
25 small group falling apart because of apparently the

disagreements, perceived or not, that they felt they had?

THE WITNESS: Yes, that's correct.

THE COMMISSIONER: And I gather that one of the disagreements perhaps was a financial disagreement.

5 That those who are contributing to the success of the group felt, I guess, that they weren't getting any special recognition for? Was that part of the problem?

THE WITNESS: There were rumblings coming through that way, yes.

10 THE COMMISSIONER: And part of the plan to get the group happy together was to designate each role each of them would play?

THE WITNESS: Yes.

15 THE COMMISSIONER: Define that role and then deal with it with the financial issues which had arisen?

THE WITNESS: Yes.

20 THE COMMISSIONER: Is that a fair way of putting it? So it was agreed apparently. It felt proper that Dr. Astaphan would get a bonus for the work he had given to the Mazda group and that was going to come out of monies which were part of the sponsors' monies; is that right?

25 THE WITNESS: Yes. I'm assuming this, but I was just following the directions, you know, of Charlie

and Heidebrecht on this.

THE COMMISSIONER: Charlie as well?

THE WITNESS: Charlie was aware of this,
yes.

5 THE COMMISSIONER: But you told Mr.
Heidebrecht this was money coming directly from the
Japanese car manufacturer Mazda; is that right?

THE WITNESS: Yes, that's correct.

10 THE COMMISSIONER: So it was a bonus for
him and it was a bonus for Waldemar, and I think Mr.
Francis told us he got an automobile at some stage. Was
that at the same time? He told us about getting an
automobile. I forget.

15 THE WITNESS: I'm not sure when Charlie got
the automobile.

THE COMMISSIONER: And I gather you got no
bonus?

THE WITNESS: No.

20 THE COMMISSIONER: All right. Mr. Bourque.
Well, just following that through, when you were helping
Mr. Johnson with his financial affairs, you were, I
gather, just trying to do what was best in his interests
throughout?

THE WITNESS: That's correct.

25 THE COMMISSIONER: All right. There was no

financial gain to you?

THE WITNESS: No.

THE COMMISSIONER: All right. Mr. Bourque?

MR. BOURQUE: Thank you, Mr. Commissioner.

5 You have covered about half the ground I was intending to,
and I might say you certainly covered it more efficiently
than I would have.

THE COMMISSIONER: You had to say that, Mr.
Bourque. If you said the contrary, you would be in
10 trouble.

EXAMINED BY MR. BOURQUE: I could have remained silent.

Q. Mr. Earl, questions were occurring to
me all morning while you testified, and I'm afraid that
15 over the lunch hour I just haven't had sufficient time to
consult and find out necessary information to
cross-examine you as fully as I would like, but let's
start with the evidence you gave last week and carried
forth with Mr. Sullivan this morning concerning the
20 amalgamation of the Scarborough Optimist Track Club with
York University. Now I recall, and I stand to be
corrected, I could stand to be corrected, but I recall the
Director General of Sport Canada, Abbey Hoffman,
testifying earlier in this inquiry that it was a Sport
25 Canada policy in the early 1980s that high-performance

centres become the vehicle for elite athlete development in Canada. Are you aware of that being a Sport Canada policy in addition to a CTFA policy?

5 A. I'm not aware of it being a policy, but I know that Bill Heikkla of Sport Canada was the person that I talked to that said that, you know, we had to be associated with the university in order to be, you know, part of the centre. So that would sort of confirm that.

Q. And when did he tell you that?

10 A. That was prior to the amalgamation. That would have to be in '83 I would say.

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20

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Q. And so was it is Mr. Heikkla on behalf of Sport Canada who informed you of this rather than someone on behalf of the CTFA as you led me to believe earlier, in any event?

5 A. Well, the CTFA with Gerrard Mach had been trying to put an amalgamation together for, you know, the better part of a year, a year and a half.

Mr. Heikkla made this comment after there had been, you know, some futile efforts over a period of
10 time, but it was Mr. Heikkla that had made the reference of the A and B club, that if we did not associate ourselves or amalgamate with the university, we would not be classified as an A club, and we would not be eligible for program monies as they were set up. And I queried
15 the, you know, who we had produced, and the number of athletes, did that not make it an A club and he said no.

Q. So, are you aware then that there is at least the possibility, if not the likelihood, that these rules were being laid down by Sport Canada rather than the
20 CTFA?

A. That's a strong possibility.

Q. Yes.

A. Because I know that CTFA's money comes from Sport Canada. And I am sure that they have, you
25 know, some types of controls over what they are putting

the money out for.

Q. Sport Canada has some kind of control over the CTFA with respect to those monies, you are saying?

5 A. Yes, I would think so.

Q. Now, I would like to speak to you as well about this situation in 1986 respecting the coaches, payment for the coaches. And can I ask you, are you aware of what is called by the CTFA the Shared Coaches Program?

10 A. Not really. I know there is something which exists. Are you referring to the the program where a club would pay a portion of a salary and the CTFA would pay a portion of a salary for a person to be a full time coach?

15 Q. Yes. And I suggest to you that in addition, the OTFA would shoulder a third of the contract?

A. Yes, I am aware that there are programs like that that exist.

20 Q. And again you said, and I want to confirm with you, that the Shared Coaches Program deals only with full-time coaches. Is that your understanding as well?

25 A. That was my understanding that they had apprentice coaches which was something different. They had many different little programs and sometimes it was

hard to keep track of them all.

Q. Now, can I ask you in 1986, were a number of the coaches at the York University Center let go, as it is were, where their contracts not renewed by the CTFA for the reason that they didn't satisfy this requirement of the Shared Coaches Program, they only -- they were not full-time coaches. Is that your recollection?

A. Yes, yes.

Q. And --

A. That was done in very bad taste, I might add, if it's worthwhile to put it in here.

I know at least one of coaches worked about a month and a half beyond the termination of his agreement before they notified him that he had been let go.

Q. Well, now, it's my information, and I certainly hope that that's -- perhaps I shouldn't put it to you if I am not sure I can adduce proof at the proper time, but can you just identify these coaches for me. Was one of them named Yvon Pintaric?

A. Yes.

Q. Was he not a school teacher?

A. Yes.

Q. A full-time school teacher?

A. Yes.

Q. Additionally, was there not a coach by the name of Bruce Simpson?

A. Yes, there was.

Q. Was he one of the ones let go under the Shared Coach Program?

A. I am not sure whether Bruce was; Brian Barnes was.

Q. All right. And in any event, in the event that Bruce Simpson was, was he not a lawyer?

A. Yes, Bruce was.

Q. And had a full-time practice that he devoted his energies to?

A. I believe, yes.

Q. And Brian Barnes, what was his occupation?

A. He works with the designing of technical panels. I am really not sure quite how you would describe it.

Q. Well, he has some job not in the field of track and field, is that correct?

A. When the onset of his agreement, he didn't have, but towards the end of it, he was working a little piecemeal. I believe the amount of money that he was getting was like \$8,000.00, and he couldn't quite make ends meet.

Q. All right. And my information is that each of these coaches were informed in advance that their contracts would not be renewed at the end of the year. Do you dispute that?

5 A. I definitely could dispute that because in the case of Brian Barnes, he was using his money almost the second it came in to cover bills. And I believe his contract was terminated the end of March, and during April they told him that cheques would be coming to him. They
10 even told him that they were sitting in the tray waiting for signatures. And they even told me that they would be couriered down. And this went on for about three or four weeks. And then out of the blue they said, well, we were mistaken, we weren't -- we did not have the intentions of
15 extending your contract anyway because you were working outside of the parameters that were set up.

Q. And you are saying that this notice was only delivered in April sometime?

20 A. This notice was delivered almost a month after, after the CTFA felt that he was finished being, you know, given his honorarium or salary or whatever.

Q. We are dealing with April, 1986?

A. Yes.

25 Q. Now, I don't suppose you have any

correspondence relating to that, do you? That would be between the CTFA and --

5 A. Most of that was done over the phone and that was definitely correspondence between CTFA and them.

Q. CTFA and who?

A. It would be them, being Brian or Yvon, whoever it happened to be.

10 Q. All right. Now, did any of the other coaches who were let go at that time not receive timely notice?

A. Ivan did not receive timely notice, I believe.

Q. Same situation as Barnes?

15 A. Yes, but he having a teaching job wasn't in need of the money quite the same way. So, we, you know, hadn't been following it up. And we hadn't been out and out lied to that there was a cheque sitting there waiting for him the same way as it had happened with
20 Brian.

Q. Who out and out lied to you? Who was that discussion with?

A. I believe it was Denis Landry.

25 Q. Who did he say that to that there was a cheque waiting there?

A. To me. And he also said it to Brian. Brian would phone up, you know, two or three times a week.

Q. And again, did you know what the source of these funds were for these coaches?

5 A. No. No. All I knew, is that we were told the cheque was there, it would definitely be on the way, it would be there, you know, by the weekend type thing. And it seemed that there was no intentions for it to have ever have been there.

10 Q. And was it as a result of this that you later in the year requested the meeting with the CTFA president?

A. That was one of the list of items that --

15 Q. All right. And the other one was this business with the \$1,000.00 for each of the 29 carded athletes; is that correct?

A. Yes. They were attempting to set up some type of a structure at the beginning of that year. And it was let out -- or the coaches were told how it was going to be work.

20 Q. Well, do you recall who informed the coaches and what the workings of the program were? Can you tell us that now?

25 A. I believe that Gerrard Mach was one of

the people that had talked to Charlie and some of the coaches about this specific item. Denis Landry was aware of it and I believe Wilf Wedman.

5 Q. Well, were you present for any of these discussions?

A. No. I wasn't --

Q. Are you aware of a program conceived by the CTFA at that time to have athletes pay what was referred to as a Center Fee?

10 A. Yes, that's I think part of it.

THE COMMISSIONER: What was it called, I am sorry?

MR. BOURQUE: A Center Fee.

THE COMMISSIONER: A Center fee?

15 THE WITNESS: It was a fee for using the center or using the coaches at the center.

MR. BOURQUE:

20 Q. Was that the \$1,000.00 that you were describing earlier this morning that was to be split between the club and the coach?

A. Yes.

Q. That's your understanding?

A. Yes.

25 Q. And was there not opposition to that by

a number of people, including Charlie Francis, on the basis that the athletes could not afford to pay such a figure?

A. Yes, there was.

5 Q. Did that argument not prevail?

A. What was told to the coaches, what came to me was that that money would be found and that money would come from either Sport Canada or it would come from the Canadian Track and Field Association.

10 Q. Who told you that?

A. I believe Charlie told me that.

Q. Charlie?

A. Francis.

15 Q. Did anyone from the CTFA ever tell you that?

A. I was having very little contact with the CTFA at this time.

Q. So, it was just Charlie Francis who told you that?

20 A. Yes, we -- you know, the coaches basically discussed, you know, the types of things that were being set up by national. This was one of the topics of discussion.

25 Q. And when did Charlie Francis tell you that?

A. This would have to be sometime late spring or early summer, because it was well before the fall when they expected the monies to come through. I know on more than one occasion he contacted me and asked if, you know, if the money had come through.

Q. I am sorry, who called you?

A. Charlie.

Q. Now, when you say late spring-early summer, what year?

A. I think we are talking '86.

Q. Pardon?

A. I think we are talking '86.

Q. Would you agree with me that with respect to CTFA, funding we are dealing with a year that begins April 1st and ends March 31st?

A. Yes, because their year end is the end of March.

Q. Now, between this message from Charlie Francis in the late spring or early summer of '86, to the point when you were subsequently told at the end of the year, according to your evidence, that the money could not be found and would not be paid --

A. Yes.

Q. -- had you had any discussions with anyone from the CTFA or Sport Canada relating to this

\$29,000.00?

A. Most of the discussions with CTFA at this time were going through Mike Dixon. You see Mike Dixon was the Executive Director that was put in charge of the club that was being paid for by CTFA. And he had most of the contact with the sports governing bodies. This was part of his job.

Q. So, I take it that you did not have any contact?

A. No.

Q. And you said in your evidence, I believe it was Friday, that the letter you wrote or rather the meeting you requested with the president of the CTFA subsequently was predicated on the fact that you felt you would have to withdraw from track and field unless this money was forthcoming; is that not correct?

A. There were a number of things and that was one of the items that I wanted addressed.

Q. Let's deal with that one for now.

A. Yes.

Q. And I believe you said you felt you would have to withdraw because you had been put in a position of lying to the coaches about money they would receive; is that correct?

A. That's -- that would sound about what I

would say.

Q. Right. And this \$29,000.00 that we are discussing, that's the money that you are referring to when you say you were put in the position by the CTFA of
5 lying to these coaches --

A. Yes.

Q. -- is that correct. And in fact you are telling us now that you didn't have any discussions with the CTFA but only with Charlie Francis and with Mike
10 Dixon?

A. Yes.

Q. Now, if I told you that as far as the CTFA is concerned that there was never any program for this \$29,000.00 to come elsewhere from CTFA budget or from
15 Sport Canada, there was only discussion of that idea, would that surprise you?

A. Nothing would surprise me when it comes from CTFA.

Q. Now, just a minute now, you said this came from Charlie Francis and from Mike Dixon you didn't
20 say it came from the CTFA?

MR. ARMSTRONG: Well, just a minute. In all fairness, Mike Dixon is an administrator of the Center for the CTFA; Charlie Francis is a national sprints coach
25 for the CTFA.

MR. BOURQUE:

Q. Were these people that you would
ordinarily speak to when it came from coaching? I thought
5 you said you spoke to Wilf Wedman and Denis Landry when it
came to coaching?

A. I said they were aware of it. I had
spoken to Denis Landry and Wilf Wedman and this was one of
the topics that came up, you know, when you were, you
10 know, at the same place at this same time as these
gentlemen.

Q. Yes, but if there was a coaching
program to deal with, would you not expect to speak with
Denis Landry, rather than Charlie Francis or Mike Dixon?

A. No.

Q. So any of the three you expected would
have full authority to speak to you about CTFA coaching
programs from time to time?

A. I would expect I was getting correct
20 information from any of those three.

Q. Now, have you ever looked at the rules
of the IAAF or the CTFA relating to the Reserve Fund?

A. Not for quite a while.

Q. How far back would we have to go before
25 you looked at a set of rules.

THE COMMISSIONER: Is this the Athletes'
Reserve Fund you are speaking of?

MR. BOURQUE: Yes.

THE WITNESS: Probably three or four years,
5 five years maybe.

MR. BOURQUE:

Q. So, we are going back sometime '84,
10 '85, '86?

A. Yes.

Q. All right. And so you have been aware
for sometime now of the reporting requirement athletes
faced respecting their income?

A. Yes, I know that they are to report
15 their income.

Q. Now --

THE COMMISSIONER: I am sorry, I am having
trouble, I can't quite hear you.

MR. BOURQUE: I am sorry, Mr. Commissioner.
20 I asked him if he was aware of the reporting requirements
that athletes faced with respect to their income and the
Reserve Fund.

THE COMMISSIONER: I see, thank you.

MR. BOURQUE: And he said he was.

25 THE COMMISSIONER: Thank you.

MR. BOURQUE:

Q. Now, the Commissioner earlier has cleared up the matter of these two \$25,000.00 bonuses. As far as you know, that did not come out of athletes' income per se, that came directly from the Mazda Corporation to these two people?

A. That's correct.

Q. But now there is another \$10,000.00 payment that you made out of these monies you kept for Mr. Johnson in the safe at your home that he requested you to make to Dr. Astaphan, I believe, for service rendered prior to mid-May 1988. Is that correct?

THE COMMISSIONER: No, no, the \$10,000.00 was requested by Mr. Johnson to take to Dr. Astaphan, the \$10,000.00.

THE WITNESS: Ben asked for 10,000 of his money.

MR. BOURQUE: I see.

THE COMMISSIONER: And told Mr. Earl that it was for Dr. Astaphan.

MR. BOURQUE: Right.

MR. BOURQUE:

Q. And I take it your evidence is that subsequently you would receive a call from the CTFA asking

you to remit certain funds for the period in which that payment was taken by Mr. Johnson; is that correct?

A. Or a letter.

Q. And in that request for remittance from the CTFA, was that \$10,000.00 reflected?

A. I don't recall. When I received the letter for the remittance, it was, you know, in August or -- August or September of that year. And it was just a letter saying please forward X number of dollars to the ARF account.

Q. And that was a number of dollars --

THE COMMISSIONER: How would they -- how would the CTFA know what monies were received? Would they know how all the monies received --

THE WITNESS: They were keeping track of what monies were received through Larry Heidebrecht's reports. Like Larry, being Ben's agent, and Ben, would make reports to the CTFA, this is the money that I have received.

THE COMMISSIONER: I see.

MR. BOURQUE:

Q. That's my understanding, too. You knew that Mr. Heidebrecht was the one who reported to the CTFA and gave them the information with which they would then

take to you in asking for the remittance; is that correct?

A. Yes, or they would send it to Ben.

Q. All right. And did you ever keep records of the amounts of money that you kept for Mr. Johnson in your safe at home?

A. No.

Q. Were they large sums?

A. The last year or so not really. The first year they were quite large sums, but most of them were in -- or a lot of them were in the bank drafts which meant it was just keeping them for him so they didn't get lost, or, you know, misplaced. And then I mentioned we went around to the bank manager with a, you know, stack of these things and we signed them and sent them up to the CTFA.

THE COMMISSIONER: You mentioned two years, not the last year but the year before. What years are you speaking of?

THE WITNESS: We would be talking about the -- it would be '87, I guess.

THE COMMISSIONER: One was larger than the other? I didn't quite hear what you said.

THE WITNESS: '87 I think was a -- or we could even be talking about '86, could have been a larger year than '87, because Ben was injured a bit in '87.

MR. BOURQUE:

Q. You spoke to a meeting in 1988 which involved a number of people from the CTFA and as well Mr. Francis, Mr. Heidebrecht, and Mr. Johnson?

5 A. Are you referring to the May meeting?

Q. In Toronto, yes?

A. Yes.

Q. And can you tell us was that meeting not called precisely because of not just rumors in the press about Mr. Johnson's financial affairs, but also problems with recent remittances of cash and cheques out of your hands?

10

A. Not to my knowledge.

Q. You weren't aware whether that reconciled with Mr. Heidebrecht's report?

15

A. No, I wasn't aware of that.

Q. Would you ever take receipts from Mr. Johnson regarding exchange of funds like this to cash?

A. What we used to do is if we had -- if he brought me some money, then I would write on a paper, you know, there is this much money. Then when he came to pick up money, if he picked up, you know, \$5,000.00, I would just subtract it and show him where I subtracted it. It was that type of an informal type record. And then, you know, when he picked up the last of money, you know,

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the paper wasn't needed.

Q. So, it's been disposed of or destroyed?

A. As I say it wasn't -- it was just a straight piece of binder paper type thing just to keep, you know, a bit of an idea of what was there.

Q. You spoke as well about CTFA disbursements out of the reserve fund to an athlete coming slowly on some occasions. And you gave an example of a car insurance premium due in January being paid in August. Is that a specific example or something you just plucked out of the air?

A. I would have to say that was something that I plucked out of the air because I am not sure it was January and August, but I know there were occasions when Ben needed money to pay for things like car insurances and it would take six, eight, ten weeks maybe even, you know, three months to get it. And often, you know, the money had to be advanced to him prior to the money coming through from the CTFA.

Q. Would you be the one to make the submission to the CTFA for him for the disbursement?

A. If Ben contacted CTFA and they, you know, felt that it was a legitimate thing, they would send the money down. I think it depended how much -- I guess it depended on the conversation that they had with Ben at

the other end.

I know that on one occasion I think he banged his car up a little bit, and they sent the money through for him to repair the car. On other occasions, they would ask me to sit down with Ben and set out a letter requesting possibly an increase in his monthly allowance, or that type of thing, so that these things could be covered.

This was one of the things that was dealt with in May at that meeting was the increase of his monthly allowance.

Q. Yes. The athlete is required, are they not, to set forth a budget to provide the CTFA with their budgetary requirements so that a lump sum payment can be made from month to month rather than having to entertain all these special disbursement requests?

A. I believe so, but in the case of Ben, they didn't necessarily want to deal with it exactly that way.

Q. Why is that?

A. Well, the insurance for his Ferrari or Porsche, for example, the amounts of insurance you were talking of monies that were maybe 10 or \$12,000.00. And, you know, to budget that say an extra \$3,000.00 a month that would be paid every six months or every year for

insurance, they preferred that those items come directly to them. So, there was a budget which covered, you know, the house that he had, and the property, and, you know, basic insurance for his house and that, but then when it came down to things like the insurance on the Ferrari, they wanted those requests made.

THE COMMISSIONER: What about mortgage payments on the properties that he was buying?

THE WITNESS: Yes, the mortgage payments those came with the monthly things. Those were established things.

THE COMMISSIONER: I see.

MR. BOURQUE:

Q. I take it there was no problem with the monthly disbursements?

A. There were at times. And this goes back to the -- more the beginning of the fund in operation. If somebody at CTFA got terribly business busy, the money would sometimes drift through anywhere from the 10th of the month to, you know, the 25th of the month. And you never knew when it was coming in and, you know, whether it would coincide with the payments. And it was very difficult to get them to maybe advance a month's ahead so that there was money sitting there to cover

payments.

Q. And again if this happened with Mr. Johnson, would you intervene on his behalf, would you make a call to the CTFA?

5 A. Ben very often called the CTFA. He had the portable phone, he did a lot of contacting with them. Occasionally he would ask me to do something like that for him. But I would say that he phoned them more often than I did.

10 Q. So --

THE COMMISSIONER: When you are speaking of a portable phone, you mean a cellular phone in a car?

THE WITNESS: Yes.

15 MR. BOURQUE:

Q. From time to time then you would speak to personnel at the CTFA regarding his disbursements out of his reserve fund?

20 A. Yes. As I say to the lesser degree in the last two years because I was, you know, a bit away from that season.

Q. Do you recall whether you had occasion to speak to anybody at the CTFA around the time you gave him the \$10,000.00 for Dr. Astaphan?

25 A. No.

Q. You don't recall?

A. No, I didn't talk to anybody from the CTFA about that.

Q. All right. But you knew the procedure about approval for disbursements, did you not?

A. I am not sure what you are asking.

Q. Well --

THE COMMISSIONER: I don't think -- I think you said that when Mr. Johnson asked for money out of the vault in the house for cash, you would give it to him, you didn't --

THE WITNESS: Ben asked me for some of his own money which I was holding for him, and I gave it to him.

MR. BOURQUE:

Q. But you knew that you subsequently or eventually some explanation would have to be made by Mr. Johnson to the CTFA about that disbursement, the nature of it?

A. I would imagine so, yes.

MR. BOURQUE: All right. I think, Mr. Commissioner, you have covered the rest of it.

THE COMMISSIONER: Thank you.

MR. BOURQUE: Those are my questions, thank

you. Thank you, Mr. Earl.

THE COMMISSIONER: Mr. Pratt.

MR. PRATT: I changed my mind over the
lunch hour, Mr. Commissioner, I have no questions for this
5 witness.

THE COMMISSIONER: Maybe I was wise in
calling the adjournment at thate moment.

MR. PRATT: A good lunch always does that
for me, it takes my mind off of it.

10 THE COMMISSIONER: Mr. Futerman -- oh, Mr.
Sookram.

Mr. Sullivan, you are sitting Mr. Sookram's
position.

MR. SOOKRAM: Much obliged.

15 --- EXAMINATION BY MR. SOOKRAM:

Q. Mr. Earl, before the 14th day of July,
1988, had you met Dr. Astaphan?

A. Yes.

20 Q. How early in your relationship with
this club had you met Dr. Astaphan?

A. I believe I met him once in about 1985.
This is when he was doing the blood tests and that on
Charlie's athletes, and I had occasion to meet him on that
25 one time.

Q. That was in connection with the \$2,000 fee?

A. Yes.

Q. Then the next time was when you met to discuss this \$25,000.00 bonus?

A. The next time was when he came up in '88 in July, I believe. And I don't think that he was necessarily to discuss the \$25,000.00 bonus. That was to discuss the, you know, the goal of getting Ben ready for the Olympic games, for the gold medal, hopefully.

Q. I see. Now had you known -- you must have known all that time that Dr. Astaphan was giving services to the -- to the group, whether it was called the Optimist group or the Mazda group, you must have known that he was giving services to that group all along?

A. Yes, I knew a lot of the athletes were going to see Jamie Astaphan. And my wife was going to see Jamie for some headaches that she was having.

Q. As far as you know, was Dr. Astaphan ever paid for those services between 1984 until this bonus came into his hand?

A. As far as I know? I have no knowledge.

THE COMMISSIONER: Which came first? Which came first, the contract for the \$10,000.00 a month or the \$25,000.00 bonus, because I think the --

THE WITNESS: I believe the \$25,000.00 came first.

THE COMMISSIONER: Well, because the agreement with Waldemar was August of '88 and the agreement with Dr. Astaphan on the monthly amount was July.

THE WITNESS: The money came when the -- when they returned from Japan.

THE COMMISSIONER: Which is before --

THE WITNESS: So, that would be before that.

THE COMMISSIONER: All right. Thank you.

BY MR. SOOKRAM:

Q. What was the date of that return from Japan, if you remember?

A. That would be May sometime. I don't have recall of an exact date.

Q. You told us that Mr. Johnson was fluctuating, and I use that word because I think I got it directly from you, was fluctuating in a retainer of between \$10,000.00, \$15,000.00 or \$20,000.00 a month to be paid to Dr. Astaphan; is that correct?

A. Yes.

Q. Did Mr. Johnson discuss the figures

with you?

A. Just mildly.

Q. Did you have a input in his decision?

A. Probably.

5 Q. Do you think the \$10,000.00 a month was
enough for a doctor of Mr. Astaphan's caliber?

A. I didn't have an opinion, you know,
that I made on that. I know -- I knew that Jamie and Ben
were good friends as well as being, you know,
10 athlete-patient. And I felt that if this is, you know,
the agreement that Ben and Jamie had come to then this was
fine.

15

20

25

Q. So, out of the three figures that Mr. Johnson mooted, \$10,000, \$15,000 and \$20,000, the \$10,000 was the bottom of the line. It's obvious but I still wanted to underline it?

5 A. Yes.

Q. It was the lowest possible figure?

A. Yes, yes.

THE COMMISSIONER: Was that a figure that Mr. Johnson told you he agreed to pay or is that after --
10 after discussing the other figures that...

THE WITNESS: That was a figure that Mr. Johnson told me he would like to pay.

THE COMMISSIONER: How did you find out about the -- what was the word you used?

15 THE WITNESS: Fluctuating?

MR. SOOKRAM: Fluctuating.

THE COMMISSIONER: Fluctuating. How did you hear about the fluctuating going on?

20 THE WITNESS: Because Ben sometimes would sort of think out loud and he mentioned the other figures.

THE COMMISSIONER: I see.

MR. SOOKRAM:

25 Q. And the other sum that seemed to have concerned me here is this \$10,000 which you told us Ben

asked you for, to give to Jamie Astaphan.

Do you know if that money was actually paid over to Dr. Astaphan?

A. No, I don't know that.

5 Q. You told us that you thought the money was to have been paid over for drugs to be used on Mr. Johnson's heel?

10 A. I said that I had asked Ben some weeks ago if he recalled that and he said, yes, that it was money for drugs or medication for his heel.

Q. Did he not also tell you that part of the money was for the reimbursement for the tickets that Dr. Astaphan had bought for himself and Mr. Johnson to go to Japan?

15 A. No, but I knew there had been, you know, discussions on tickets because it was included in one of the letters.

Q. You didn't tell anybody that, that plane tickets were also part of the \$10,000?

20 A. It was read in the letter, in both letters, I think on two occasions.

Q. And is it to your knowledge, that from time-to-time Dr. Astaphan will pick up various bills incurred by Mr. Johnson and then eventually they would
25 settle it up?

A. I didn't have firsthand knowledge of that but, you know, it wouldn't surprise me.

Q. Do you know, sir, the cost of a return ticket from St. Kitts to Japan?

5 A. I guess it would depend on who booked it.

Q. First class?

A. No, I've never been in St. Kitts and I've never flown to Japan.

10 THE COMMISSIONER: Or first class?

MR. SOOKRAM: First class tickets.

THE COMMISSIONER: I heard you.

MR. SOOKRAM: I don't travel any other way.

THE COMMISSIONER: Well, this isn't for you.

15 THE WITNESS: Must be nice!

THE COMMISSIONER: I understand that. But I gather neither does Dr. Astaphan.

MR. SOOKRAM: Neither does Dr. Astaphan and I would suspect neither does Mr. Johnson, at this stage in
20 his career.

THE COMMISSIONER: All right.

THE WITNESS: Maybe he has the price of the tickets from St. Kitts to Japan?

THE COMMISSIONER: I have no idea. Have
25 you?

THE COMMISSIONER: All right. Mr. Sookram.
Go ahead, please?

MR. ARMSTRONG: Excuse me.

MR. SOOKRAM: Thank you.

5

MR. SOOKRAM:

Q. Mr. Earl, you told us that a few weeks ago you found it necessary to contact Mr. Johnson to find out about this \$10,000?

10

THE COMMISSIONER: I don't think he said it was necessary.

THE WITNESS: No, I didn't say that. I said I happened to be near Mr. Johnson and I inquired.

15

MR. SOOKRAM:

Q. Yes. Any particular reason why after all this time the inquiry about this \$10,000? Did somebody urge to you inquire about it?

A. No, nobody urged me to inquire at all.

20

Q. It just came out of the blue, the thought?

A. Well, I knew everything was being put under a microscope and I just posed the question.

25

Q. And the answer you got was simply that it was for drugs?

A. No. The answer I got was that it was for medication for his heel.

Q. Well, medication, I expect is just another name for it. I wasn't talking about steroids.

5 A. We can't be too specific sometimes.

Q. And did Mr. Johnson confirm with you that you'd handed over the \$10,000 to Dr. Astaphan?

A. No, he just made the statement, you know, similar to what I had said.

10 Q. Now, I appreciate that you told us that you didn't get a bonus yourself?

A. No.

Q. Dr. Astaphan got a bonus, Mr. -- can I pronounce his name?

15 A. Waldemar Matuszewski.

Q. Mr. Matuszewski got a bonus. I couldn't remember if you told us whether or not Mr. Francis got a bonus?

A. I'm not sure.

20 Q. You're not sure. And you didn't -- definitely didn't get a bonus. Were you ever paid anything by Mr. Johnson for looking after his affairs?

A. No.

MR. SOOKRAM: I'm obliged to you, sir.

25 Thank you very much.

THE COMMISSIONER: Thank you. Mr. Futerman?

MR. FUTERMAN: Mr. Commissioner, can I
request a five minute break.

THE COMMISSIONER: All right. Five minutes,
5 thank you.

--- Recess

---Upon resuming

10 THE COMMISSIONER: Mr. Futerman?

EXAMINED BY MR. FUTERMAN:

Q. Good afternoon, sir. Mr. Earl, you and
I have met so it's not necessary for me to introduce
myself to you.

15 A. Yes.

Q. Mr. Earl, you have stated, on more than
one occasion, that you were not aware of any use of
anabolic steroids by any of the Scarborough Optomist
athletes up until Seoul, is that correct?

20 A. Yes, that's correct.

Q. And you've also stated that you were
aware of the rumors that were circulating about the use of
anabolic steroids among the group of athletes that Charlie
Francis was coaching, is that correct?

25 A. Would you ask that one again?

Q. Sure. You were also aware, at various times, about the rumors that were circulating and, in fact, reported from time-to-time in the press about the use of anabolic steroids by some of Charlie's Francis' athletes, is that correct?

A. Yes.

Q. All right. Is it fair to say that this caused you some concern from time-to-time?

A. It had for almost 12 years.

Q. I'm sure it did. And I suppose along those lines you then spoke to Mr. Francis to get a reassurance about whether, in fact, any of the group of athletes that had come up through your system and now were part of the Scarborough Optomist group, and later the Mazda group, were in fact receiving anabolic steroids?

A. We had talked about a program of vitamins and food supplements that the athletes were on just, you know, lightly. I wasn't too much involved in this. And towards the end, Charlie had said that Jamie was going to publish a book which would basically outline the program, you know, of vitamins and food supplements that would be necessary to develop an athlete of very high calibre.

Q. Are you telling me then that in reply to the concern that you've expressed to Mr. Francis, his reply

was that the athletes were receiving, in fact, vitamins and other food supplements?

A. Yes.

Q. And did you believe him?

5 A. Yes.

Q. And is it fair to say that had you known that Mr. Francis was, in fact, allowing some of these athletes to receive anabolic steroids over these years that you would have done your best to put a stop to it?

10

A. It certainly would have changed the picture a lot.

Q. Well, would you have done your best to stop it?

15 A. Most probably. It's difficult to answer a question that didn't happen, you know, like what you're asking. I would not have been in favour of it. Whether, you know, I could have stopped it or not would depend on exactly when and who had the influence over

20 Charlie.

Q. It's not whether you could have stopped it. The question I asked you ---

A. Would you put it different?

THE COMMISSIONER: Well, he said it's

25 difficult to answer a hypothetical question which is

always a proper answer. It's a hypothetical question. You asked him whether he would have stopped it; he said he doesn't -- what was your answer? You probably would have. He wasn't sure he would be able to do so.

5 THE WITNESS: Yes.

MR. FUTERMAN:

Q. All right. Did you continue to investigate these rumors from time-to-time after Mr. Francis gave you his explanation?

10

A. I didn't really go out and try to investigate them. I knew that the Canadian Track and Field Association was testing the athletes, you know, periodically or on a regular basis. I knew that the athletes were, you know, not showing positive tests. I assumed everything was in order and everything was fine.

15

Q. Did you at any time sit down with any of these athletes and talk to them about the possible side effects of steroids?

20 A. I had no reason to. No, I didn't.

Q. Is it fair to say, Mr. Earl, that had you known, you would never would have condoned or allowed your athletes to cheat. Is that fair to say?

A. That would be fair to say.

25 Q. Mr. Earl, let's talk about the house

that Ben bought on Blacktoft?

A. Yes.

Q. I understand that you and Mrs. Earl
were kind enough to come and see the house and speak to
5 the agent who drew up the offer?

THE COMMISSIONER: Is this the first or
second one?

MR. FUTERMAN: This is the only house he
bought on Blacktoft.

10 THE WITNESS: First house.

THE COMMISSIONER: I thought there were two
real estate transactions.

MR. FUTERMAN: No, no. But this is the
house that he bought ---

15 THE COMMISSIONER: One was the lot and one
was the house?

THE WITNESS: Exactly.

THE COMMISSIONER: We're talking about the
house.

20 THE WITNESS: That's right.

MR. FUTERMAN: Mr. Commissioner, I've been
waiting for that. I never thought I'd have to opportunity
of catching you but I did. Thank you, sir.

25 THE COMMISSIONER: It wasn't much of a
catch, really.

MR. FUTERMAN: I'll back off then. Forgive me.

MR. FUTERMAN:

5 Q. You and Mrs. Earl came to see the house, the agent drew up the offer?

A. Yes.

Q. And you reviewed it and explained to Ben what the offer meant?

10 A. The agent reviewed it to the family and Ben with myself and my wife sitting there.

Q. And you were the one that introduced Ben to the bank manager that arranged Ben's mortgage, is that correct?

15 A. Yes, I did.

Q. In fact, that was your bank manager, the one that you had used for many years?

A. Yes.

Q. Is that correct?

20 A. Yes.

Q. And you, Mr. Earl, were the one that was kind enough to arrange either the mortgage or the loan for Ben so that he could buy the house, is that correct, with the bank manager?

25 A. Yes.

Q. Yes. And finally when the papers were ready, Ben went to the bank to sign them?

A. That's correct.

Q. And did you go with him?

5

A. No.

Q. To your knowledge, the papers were already prepared?

A. I assume so, yes.

10

Q. And the bank filled out all the forms, is that correct?

A. That's the way they generally do it.

Q. And Ben went there to sign it, is that correct?

15

A. To the best of my knowledge. As I say, I wasn't there.

Q. And it was you, Mr. Earl, I understand that explained to Ben what the amount of the mortgage was, the interest, and its' terms, is that correct?

A. Yes.

20

Q. In fact, is it fair to say, Mr. Earl, that Ben, to your knowledge, never read over the offer to purchase or the mortgage or any of the other papers that he was required to sign?

25

A. I don't think that would be fair to say because I wasn't there when he signed most of these

papers. I was there when the real estate man went through the, you know, the first form with him. You know, putting down the totals and the amounts and that sort of thing.

And Ben was definitely aware of, you know ---

5 Q. Ben was there?

A. Yes.

THE COMMISSIONER: You're not aware of it?

MR. FUTERMAN:

10 Q. You're not suggesting he read the offer
itself?

A. No, I don't even think I read the
offer.

15 Q. All right. Sure. You relied on the
agent to do all of that?

A. I think any purchase I've ever made, I
usually do that myself.

20 Q. I see. Let's now talk about the
property on Markham, if we may? Ben asked you to help in
purchasing a lot on Markham -- in Markham, is that
correct?

A. No, Ben came to my house one Sunday.

Q. Yes?

25 A. And said that he was interested in
buying a house up in the area of -- north of Bayview --

north of 7, east of Bayview. They were just starting the large developments there of, you know, \$300,000 homes and so on and so forth and he had come up through there and said he was interested in buying a house in that area, would Sylvie and I come out with him to look at some of those little kiosks that they set up. And we did, and I was amazed at the amounts of money that they wanted for, you know, what was there.

I believe they were 50 foot lots and they were asking \$399,000. And I had suggested to Ben that, you know, maybe he could do better with his money if he bought a piece of property and built the house that he wanted on the property for about the same amount of money.

And we drove around and looked at the Cachet Estates where there were lots marked off that were fairly large lots and I showed him an example, that these lots were three and four and five times as large and I said, this type of thing because in the future land is, you know, what, you know, holds the most value as opposed to the house.

Q. Forgive me, Mr. Earl. I'm not suggesting that you weren't very helpful to Ben in purchasing this lot. I, in fact, am trying to say that you were extremely helpful to Ben in picking out the right lot for him to buy, is that correct?

THE COMMISSIONER: I thought he said he selected the lot himself, didn't he?

THE WITNESS: Well, we wrote the phone number of the Cachet Estates down and Phase I was sold out and Ben phoned and found out that there was, in essence, one lot an available and we went up and looked at that lot and Ben went ahead and said that he wanted to buy it.

MR. FUTERMAN:

Q. All right. You went together with Ben when you picked out that particular lot, is that correct?

A. I believe he was there first and I believe I went up and saw it second and then...

Q. All right. And in purchasing this lot, I gather the agent or someone drew up an offer to purchase, once again?

A. I would assume so. I never saw it.

Q. Okay. And Ben went back to the same bank manager?

A. Yes.

Q. And did you help in making any of the financial arrangements with that bank manager again?

A. I think in a conversation with the -- with the bank manager, or it could have been with Ben ---

THE COMMISSIONER: Were you guaranteeing the

loan?

THE WITNESS: No, no.

MR. FUTERMAN:

5 Q. But you spoke to the bank manager about the loan, did you not?

A. Yes, because, you know, I was the person that was the contact that knew that, you know, Ben had money in the ARF account, that type of thing.

10 Q. Yeah, but what confuses me a little bit, ben has already met this manager. Why was it necessary for you to contact the manager again? Why couldn't Ben just simply go and do it by himself?

A. Well, Ben asked me to call him.

15 Q. All right. Did you tell him that, 'You don't need me this time, you've already met the manager,' or did you go along?

A. No, I gave him a call because I think at this time, we were in -- when Ben decided that he
20 wanted to buy the house, he had to have an offer within so many hours.

Q. Why was it necessary for you to come? What role did you play with the bank manager?

A. Probably wasn't necessary for me to
25 come. I didn't go to the bank manager.

Q. Did you speak to the bank manager?

A. Yes, I did, on the phone.

Q. What did you tell him?

5 A. I told him that Ben wanted to buy a piece of property in the Cachet Estates and I believe his question was, what was the value of the property, type thing.

Q. He relied on your judgment as to the value?

10 A. Then he said he would have to have someone go up and check it out or whatever the way they do.

Q. Did you tell the manager how much money would be required?

15 A. I believe he asked me how much and the range was in the \$180,000 mark.

Q. And then subsequently, I gather the manager took a look or had someone look at the lot, had it appraised, approved the value and allowed the loan?

20 A. I would assume that.

Q. Yes. As far as you know, by the time Ben went back down, all he had to do was sign on the dotted line, is that correct?

25 A. Again, that's customary when you're dealing with banks, that the work is ready when you go in

there.

Q. All right. In addition to helping Ben in terms of looking at the lot, did you also, ultimately once the loan was approved and the money, I guess
5 advanced, did you also find him -- I think you referred to the gentleman as an architect last week?

A. Yes.

Q. Perhaps we're talking about a designer. I understand this gentleman you're referring to was not an
10 architect but just a designer?

A. Could be. Are you talking about Mike Tindall?

Q. I didn't want to mention his name but you already have. I guess that's who we're talking about?

15 A. Because I believe Ben had someone who was an interior designer working on the house as well. I never met the man, I don't even know his name. That was someone Ben had set in place.

Q. My information is that Mr. Tindall is
20 not an architect but a designer. Nothing turns on it. I just wondered if you knew that?

A. No.

Q. But, in any event, he was someone that you knew and you introduced Ben to him?

25 A. Yes. He had helped do some -- some

work on my house where, you know, he made the design so that they would reach the bylaws and that sort of thing and he was the only person that I knew that was in that type of business.

5 Q. All right. And when the discussions insofar as the design of the prospective house was discussed, you were present with Mr. Tindall and Mr. Johnson, is that correct?

 A. On some occasions.

10 Q. Yes. And I think you indicated last week, and I may be mistaken, I may not have heard the evidence correctly, but I had the impression that you were suggesting Ben made many changes in the original design, is that correct?

15 A. Yes, he made many changes in the size of the house and the design of the house.

 Q. If I was to suggest to you that the only change that was made was one slight change and no other by Ben, would you disagree?

20 A. I think I would have to because the house that he was first talking about, he was talking about something in the 4,000 foot, you know, 4,000 square foot and then it was up over five and then it was up over six and then I think it ultimately stopped someplace
25 higher than that.

Q. Well, were you present when all these changes were made?

A. No, I wasn't.

Q. How do you know these discussions took place? Is that something that Mr. Tindall told you?

A. I believe that Mike told me that, yes.

Q. You believe that?

A. Yes.

Q. Are you absolutely sure?

A. No, I'm not absolutely sure.

Q. All right. And I understand that the builder was brought in by Mr. Tindall, is that correct?

A. I had nothing to do with that. You know, I can't even answer it on that. I believe so.

Q. All right. And as far as you know, and you may not, did Mr. Tindall and Mr. Ben get along very well?

A. To the best of my knowledge.

Q. And that Ben trusted Mr. Tindall's judgment insofar as the design is concerned?

A. Ben had input into it.

Q. Yes?

A. Because Ben was telling me the types of things, you know, the stone and that that he wanted on, on the house, but as I say, I had very little contact with

Ben and Mike Tindall over the house. I believe they met at my house maybe once or, you know, at the outside twice. The other times they met at Ben's house.

Q. Fine. You have no idea personally then what was discussed when Ben and Mr. Tindall met?

A. Of course not.

Q. All right.

THE COMMISSIONER: Except when they were in his presence.

MR. FUTERMAN:

Q. Yes, yes. Except -- well, was there anything else they discussed in your presence?

A. Not ---

Q. That you can recall.

A. Not that I recall.

THE COMMISSIONER: You said something about the type of stone. Was that in your presence?

THE WITNESS: No, Ben told me that there was a type of stone that he wanted on the house.

THE COMMISSIONER: I see.

MR. FUTERMAN:

Q. He told you he wanted a type of stone on the house?

A. A type of stone on the front of the house.

Q. Do you remember what kind of stone?

A. No, I don't.

5 THE COMMISSIONER: Anything else about the details of the house?

THE WITNESS: I saw the plans ---

MR. FUTERMAN: Sorry, Mr. Commissioner, I can't hear you?

10 THE COMMISSIONER: Anything else about the details of the house?

THE WITNESS: I saw the plans, you know, at the one time, I saw the plans but, you know, that was more me observing and Mike and Ben, you know, going over
15 the, you know, the drafting papers or the plans.

MR. FUTERMAN:

Q. Just to move into another direction now, you've told this Inquiry and you've told many -- some
20 of the lawyers questioned you about the cash monies you received from Ben?

A. The monies that Ben gave me to hold for him?

Q. Yes?

25 A. Yes.

Q. And I'm having some difficulty in understanding why, other than that slip of paper you referred to I think in the cross-examination of Mr. Bourque, why you didn't keep records or books to confirm the transactions?

A. I had no reason. I have no reason why I didn't. I....

Q. Are you telling me, Mr. Earl, that during this entire period of time, other than the slip of paper that you mentioned that figures were crossed out from time-to-time, Ben never received a receipt or an acknowledgement from you, even though at various times you had thousands of dollars in the safe?

THE COMMISSIONER: Sorry? He would be the one that would give the receipt if he was given the cash.

MR. FUTERMAN: I'm sorry?

THE COMMISSIONER: Mr. Johnson would be the one who would give the receipt if he was getting the cash.

MR. FUTERMAN: I said Ben never received a receipt or acknowledgement from you.

THE COMMISSIONER: Well, he didn't get a receipt either, apparently.

MR. FUTERMAN: No, no. But he had the money. I'm going to come to that afterwards, Mr. Commissioner.

THE COMMISSIONER: Well, except when money is transferred to somebody else, then that person gives a receipt that he has got the money which you're starting -- I see. You say when Mr. Earl got it he didn't give Ben a receipt?

MR. FUTERMAN: Exactly. That had to happen first?

THE COMMISSIONER: Mr. Johnson.

THE WITNESS: Much of this stuff was the, you know, the traveller's cheques and the ---

MR. FUTERMAN: We know about that, yes.

THE COMMISSIONER: We spoke of large amounts of cash, though.

THE WITNESS: Yes, and there was cash.

MR. FUTERMAN:

Q. I just have difficulty in fathoming that. Was it a matter that Ben trusted you so much that he would not have asked you for a receipt or an acknowledgement at any time?

A. I would say that would sound logical.

Q. That's kind of indicative of his nature, isn't that fair to say, Mr. Earl?

A. Yes.

Q. And when Ben asked you for the \$10,000

from the safe, you actually gave him this money without asking what he wanted the money for?

A. He told me he wanted to take it to Jamie and I gave it to him, yes.

5 Q. You weren't concerned about why Ben would give this amount of money to Dr. Astaphan at that time?

A. No.

Q. You weren't?

10 A. No.

Q. It seemed quite normal to you?

A. I'm not sure what you mean by normal. You mean, had he done it before or....

15 Q. I guess when I hear this, I would have thought that as a matter of prudence you would have asked him why he wanted all this money?

A. Well, I asked him what it was for and he said that -- I knew that he was going to St. Kitts and he said he was taking it to Jamie.

20 Q. And that's all you had to ask him? That's all you had to hear?

A. Yes.

Q. All right. Did you ask Ben for a receipt that he received this money at that time?

25 A. No, I didn't.

Q. I gather you just crossed out the \$10,000 on that slip of paper?

5 A. I think Ben and I went up to the room where the safe was and we opened the safe, we got the stuff out, I gave it to him and I believe I, you know, usually crossed it off and he knew what was left in the safe.

10 Q. All right. And did you tell Ben when he gave the money to Dr. Astaphan that he should get a receipt?

A. No, I didn't.

Q. Or an acknowledgement?

A. No, I did not.

15 Q. That did not occur to you either?

A. No.

20 Q. Is it fair to say, Mr. Earl, when it came to financial matters, that Ben looked to you for guidance and advice and Ben would not have done anything without discussing the contents of that with you or with Larry Heidebrecht or with Charlie Francis or with Glen Caulkins, is that fair to say?

A. No, that's not fair to say.

Q. It's not fair to say?

A. No.

25 Q. All right. Is it fair to say that you

and Charlie Francis, to this day, have remained very close and loyal friends?

A. I'm still good friend of Charlie, yes.

Q. Are you very close friends with

5 Charlie?

A. I would think so.

Q. Yes. And have you ever discussed with him the evidence that he's given at this Inquiry prior to testifying today?

10 A. We've never sat down and discussed this steroid issue. That's something that the Inquiry is involved in and I, you know, didn't wish to discuss specifically what he had talked about.

Q. Did he tell you before he testified
15 what he was going to say?

A. No. No, he didn't. I don't believe he did.

Q. During the time that Ben was a member of the Scarborough Optomist group, did you at any time
20 encourage Ben to continue with his schooling?

A. I don't believe we ever talked about his schooling at all.

Q. I guess that means you never spoke to any of Ben's teachers at Yorkdale?

25 A. No, I never did.

Q. And you never talked to Ben about what kind of employment he might enjoy after the track and field career was over?

5 A. We talked a little bit about possibly putting enough money away, you know, into the ARF fund account that he could maybe buy a major franchise or something, you know, like a McDonald's or whatever, that type of thing.

10 But outside of that, we hadn't, you know, had any real discussions. Ben often came to see me when I was at school and in class or, you know, during a recess period where there was not an awful lot of time where you could talk.

15 And he would just make a request or something and, you know, when you're working with special ed. kids you can spend only so much time, especially when they know who this somebody is.

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25

Q. I understand. But at any time was there any specific plan that you and others arranged for Ben for his long-time financial protection?

5 A. Ben wished to run until '92. I know that. We talked with the CTFA about, you know, what might or might not be allowed to do with money management, that type of thing, and there was such a lot of ambiguity that was circled around the ARF fund. I believe when the ARF fund was set up, they had visions of athletes with a few
10 thousand dollars to maybe 20 or 30,000 in there. I think that Ben's amounts were much bigger than they expected.

Q. The question I asked was after his career was over, did you and others have any specific plan for Ben after his career was complete?

15 A. Well, I didn't. I had no discussions on this.

Q. And you were not aware of anyone else--

A. I didn't have discussions with him on this, and I'm not aware whether someone else did or not.

20 Q. Did you ever sit down with any of the athletes and discuss what should happen to them after their careers are over? We all know that a track and field career is brief. Did you encourage your athletes to save money so that someday they would have something to
25 fall back on when this was all over?

A. I encouraged the athletes to put their money into the ARF account because it was a good method of saving money, but outside of, I believe, Angella who made it known that she might, you know, like to coach in the future, we didn't really--and that just sort of came up as a matter of fact. We didn't really sit down and discuss this.

Q. Well, the ARF account, that's not something that's discretionary. The athletes have to put their money in there so that's not something you encourage them to do.

A. But the encouragement was to leave it in there as much as you possibly could.

THE COMMISSIONER: Well, the withdrawals-- you mentioned you encouraged your athletes to put money in the ARF account.

THE WITNESS: To put it in and leave it in.

THE COMMISSIONER: Well then how did you let Mr. Johnson take out these tremendous amounts--didn't he buy a Ferrari car from this ARF account?

THE WITNESS: Yes, he did.

THE COMMISSIONER: Were you part of that?

THE WITNESS: Not really.

THE COMMISSIONER: How much is a Ferrari, by the way?

THE WITNESS: I believe it was about \$257,000. Somewhere in that area.

THE COMMISSIONER: Well, did you encourage him to do that because that's no way of--

5 THE WITNESS: No, he did that on his own.

THE COMMISSIONER: I'm assuming that notwithstanding the very substantial amount of money in the ARF account, is there no obligation on the CTFA or yourself to resist that type of--

10 THE WITNESS: Ben was very strong-willed and there was a lot of resistance put up to his purchase of the Porsche and his purchase of the Ferrari.

THE COMMISSIONER: I don't know. Which is--is a Ferrari a more expensive car than a Porsche?

15 THE WITNESS: Yes, the Porsche only cost \$108,000.

THE COMMISSIONER: I see. But as a friend, no matter how big that account is in the CTFA, that's a big chunk of money for a young man to spend on automobiles, is it?

20 THE WITNESS: As a matter of fact, I believe two or three days before Ben appeared at my school with his Porsche, I had heard rumours that he was buying a Porsche. I asked and he said no, he was not buying a
25 Porsche.

THE COMMISSIONER: Well I'm not--I was interested in the point that Mr. Futerman was making with you that the ARF account was a wise thing for athletes no matter how successful they are to put it in this account. That's an interest-bearing account, is it? That money is invested?

THE WITNESS: Yes, it is.

THE COMMISSIONER: And no matter how well they do on this, it strikes me as something that should not have been approved. Does the athlete have the say? I got X dollars there and I want to spend it on anything I want? Is it automatic that he can take it out while he is still competing? He was still being funded by the way, was he? His carding still was on?

THE WITNESS: I believe it was. That was one of the discussions at the meeting in May.

THE COMMISSIONER: But I'm just interested in how the system works. Is it treated as if --well, it's his money. It's really the theory being that although money comes to his credit, it really shouldn't be treated as his until he has retired. Isn't that the theory, subject to living allowances and so on?

THE WITNESS: I think the interpretation of that was left up to the Canadian Track and Field Association and, more specifically, the special athlete

service manager. To the best of my recollection, the IAAF rule said that he was allowed a reasonable mode of transportation, and it's whether they would classify, you know--

5 THE COMMISSIONER: I'm not speaking of Mr. Johnson specifically. I'm just trying to get a feeling of this ARF fund and how it's administered.

10 THE WITNESS: The total administering of the fund came from the CTFA and from Steve Findlay. Now, Ben would have to, you know, request what he wanted from the funds.

THE COMMISSIONER: I see. Did you assist him in making this request?

15 THE WITNESS: Yes, he would sit down with me sometimes and I would assist him in making the request.

THE COMMISSIONER: And it pretty well would be acquiesced in by the CTFA? You asked for requests for some of your other athletes as well?

THE WITNESS: I don't believe so.

20 THE COMMISSIONER: All right. Sorry to interrupt, Mr. Futerman.

MR. FUTERMAN: Thank you. That's most helpful, Mr. Commissioner. I'm going to be at least a half hour to 40 minutes.

25 THE COMMISSIONER: Well, let's go on for a

few more minutes.

MR. FUTERMAN: All right.

Q. When you found out about the purchase--

5 THE COMMISSIONER: The last few minutes was my time. Now you're back to your time.

MR. FUTERMAN: Thank you, sir.

10 Q. When you found out about the purchase, were you upset?

A. What purchase?

Q. The purchase of the car.

A. Of the Ferrari?

Q. Yes. Were you upset?

15 A. Yes, I was quite upset.

THE COMMISSIONER: I think you said you were upset about the Porsche too, weren't you?

THE WITNESS: Yes.

20 MR. FUTERMAN:

Q. And you're saying Ben had not told you anything about this?

25 A. There had been rumours and I asked him and he kept saying no, that he wasn't going to buy the Porsche, he wasn't going to buy the Ferrari and then all

of a sudden it was, "The Ferrari is coming".

Q. And what did you do, if anything? Did you try to stop the purchase?

A. Yes, I did.

5 Q. You called Ferrari I believe the next day or as soon as you found out?

A. No, I drove down and spoke to the sales manager and I was told to go and take a hike.

10 Q. Okay. And you felt at that particular time that Ben had acted irresponsibly in buying this car; is that correct?

A. Ben was sure he was going to win the gold medal and that the world would come up roses. I have been around sports long enough that, gosh, I can't
15 guarantee, you know, anybody's going to win. So I guess I proceed with a little more caution than some people.

Q. You realized at this particular time he was spending money foolishly, as far as you were concerned? These cars were not necessities and they were
20 not something he should have bought; is that correct?

A. In my estimation, his retort to that was that it was his lifelong dream.

Q. I understand. But had you been involved at that time, you would have stopped it, you
25 would have tried to stop it?

A. Oh, yes, if I could have, I would have, yes.

Q. In fact, you went down to the Ferrari dealer the next day and you tried to stop it?

5 A. Yes, I did.

Q. Because you realized that that was irresponsible?

A. I felt it was irresponsible.

10 Q. And did Ben know that you were going down to the Ferrari dealer to try to stop the purchase?

A. I don't believe so.

Q. So you went there without his permission?

A. Yes.

15 Q. Why did you do that?

A. When I asked them, I didn't necessarily ask them to stop the purchase. The Ferrari, I had asked Ben to wait until after the Olympic Games, you know, if he really felt that he had to purchase the Ferrari, and he said yes, he would. And then he put the ball in motion, and the Ferrari looked like it was going to be delivered around the middle to the end of August. I thought well, if I could delay him getting the Ferrari for a week, then he would have been to Seoul, have competed and we would know whether he was first, second, third, fourth or fifth.

20

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And if he hadn't actually driven the car off the lot, it might make a big difference. So I asked them if they would delay the delivery of the Ferrari for one week and they told me no.

5 Q. Did you express your disappointment and anger with Ben at that time?

A. My anger?

Q. Yes. Were you angry at Ben for buying this car?

10 A. I'm not sure whether I even saw Ben during that week. I never saw the car.

Q. Did you ever see him again?

A. Ben?

Q. Yes. After he bought the car.

15 A. Yes, I saw him when he came back from Seoul.

Q. Was that the next time you saw him after the purchase of the car?

20 A. I believe so because he went from here to Vancouver to Japan to Seoul.

Q. All right. Let's talk about Charlie Francis for a moment. Is it fair to say, and I suggest to you that Ben looked up to Charlie Francis as if he was his father. Is that a fair statement to make?

25 A. That's a statement that's been used

many times. I think Ben definitely respected Charlie.

Q. And that in terms of his career as a runner, that he was told he depended on him and he trusted him completely as his coach?

5 A. I would say that's a fair assessment, yes.

Q. And If I was to suggest to you, as I am, that Ben never signed any contract that he read first and that every contract had to be explained to him by
10 either you or by Charlie Francis, by Larry Heidebrecht, by Glen Caulkins or others?

A. I can't answer that. I know that I explained one or two contracts to Ben myself.

Q. Yes. Whenever you were involved and
15 there was a contract present, you sat down and explained it to Ben. Is that fair to say?

A. There were a number of times we sat around the table with a stack of contracts where, you know, Ben said he had read them or whatever, and, you
20 know, dealt with things fairly quickly.

Q. Did you ever see him read a contract?

A. Well, I saw him look at contracts. Whether he was reading or not, only he would be able to tell you.

25 Q. All right, that's fair to say, Mr.

Earl. Let's talk about Ben's refusal to go to Spain in May of 1988. Is it fair to say that when you spoke to Ben, that you were doing your best to persuade him to go to Europe?

5 THE COMMISSIONER: So this is after Tokyo?

MR. FUTERMAN: This is in the spring, May of 1988.

THE COMMISSIONER: When he was returning--

10 MR. FUTERMAN: When he was preparing for Tokyo.

THE COMMISSIONER: Where he was injured and when they were on their way to Spain and we have gone through that.

15 MR. FUTERMAN: Exactly.

A. I'm not sure whether I influenced him to go to Spain or not. I think it had been sorted out by Larry and Ben and Charlie and CTFA and everybody concerned that he was going. I know that when Ben said that he
20 wasn't going, I was asked by Larry to see if I could persuade him to go.

Q. Ben was injured both physically and emotionally at that time?

A. Yes.

25 Q. Is it fair to say that it was

reasonable for him not to want to go to Europe but to go to an island where he could relax? Is that fair to say?

A. Yes, that could be fair to say, sure.

Q. And that his mother spoke to you specifically and told you that she was forbidding him from going to Europe at that time?

A. I'm not sure whether she used that word. His mother spoke to me and said that Ben wanted to go to St. Kitts, Jamie wanted Ben to go to St. Kitts and that's what she wanted. So I don't know if the word "forbid" ever came into it.

Q. But she made it quite clear to you that she was very anxious for Ben not to go to Europe but to go to St. Kitts?

A. Yes.

Q. Now, I am a little bit confused about what happened to you after you dropped out of the Scarborough group around 1986 when this so-called change took place that caused you the problems that you have already related to us. What was your continuing role? Was it just as a financial advisor and money-raiser or did you have a continuing role beyond that?

A. With the club?

Q. With the club.

A. With the club I was probably the chief

fundraiser, and we were raising funds to keep the splinter groups going until, you know, they either were able to stand on their own feet or, you know, as long as--it would all depend on, you know, how they grew and whether we could afford to sponsor the four groups that came out of the collapse of the original club.

Q. Well, besides being the chief fundraiser, were you also able to sign cheques on behalf of this group? Who were the cheque-signing authorities?

A. You mean the Scarborough Optimists?

Q. Yes, or any of the splinter groups.

A. Yes, I signed cheques for the Scarborough Optimists, but I could not sign them for the Optimists or the New Balance or the Scarborough Optimists Track and Field Club or the Mazda.

Q. Let's talk about the Mazda.

A. Yes.

Q. When did they come into the picture?

A. They came into the picture I believe towards the end of '86. I believe the negotiations went on for a number of months before, you know, anything really happened there, and the name Mazda was bantered around, but nothing materialized through '86. And, you know, after I had dropped out of that type of participation, the spring of '87 I believe something did

materialize with the Mazda.

Q. So that in terms of signing on behalf of the Mazda, you had no authority? That wasn't one of the continuing roles that you enjoyed once they came into the picture; is that true?

A. That I had no authority on their books, that's correct.

Q. Well, just to move forward a little bit, and we are going to come back, why was it when that exhibit, I believe, 133 was signed by Waldemar, that you identified yourself as Ross Earl, and in brackets, Mazda Track, I think you said, Inc, but I don't remember?

THE COMMISSIONER: Mazda Optimist T.C.

MR. FUTERMAN:

Q. Why did you identify yourself as part of the Mazda group?

A. When Charlie put the Mazda group together, he asked me if I would be like an honorary president. I think how he felt, it was like a little bit of repaying me back because I had, you know, worked with the track and field athletes for a long time and it would help me to still associate a little bit with Charlie and the group, even though I wasn't associating with the Ontario Track and Field Association or the CTFA or in that

type of an active role. It was more of a figurehead-type thing.

Q. Are you saying that Charlie Francis was in control of this track club called the Mazda Track Club?

5 A. That would be fair to say.

Q. And who appointed him as such?

A. I don't know.

Q. Did the Canadian Track and Field Association designate Charlie Francis?

10 THE COMMISSIONER: Who made the arrangements for Mazda, by the way?

MR. FUTERMAN: Pardon me?

THE COMMISSIONER: Who got the sponsorship for Mazda?

15 THE WITNESS: I believe the sponsorship for Mazda was obtained through Charlie and Larry and the CTFA. I can't answer any questions on that because I was not party or parcel to any of that.

20 MR. FUTERMAN:

Q. It just seems unusual to me, and perhaps me alone, that a coach, a national Canadian coach would be put in charge of the track club in arranging all the financing and appointing the officials. That seems
25 kind of peculiar to me.

A. Appointing what officials?

Q. You, for one. Perhaps others. I don't know.

5 A. I don't know either. You would have to ask Charlie or CTFA that.

Q. I'm asking you that. Are you saying that besides yourself, are you aware of any other officials that were appointed by Charlie Francis on behalf of the Mazda Track and Field Club?

10 A. No.

THE COMMISSIONER: Were you an official? I don't think you were an official.

15 THE WITNESS: I said I was sort of an honorary type because I did not attend meetings. I had no decision-making in the operation of the club. My impression was that most of that came from the CTFA because Mazda had paid a sum of money to the CTFA in order to negotiate or have the privilege to, you know, invest in the centre or however you want to put that.

20 MR. FUTERMAN:

Q. All right. You are speculating that. You are not sure. Do you know that for a fact?

25 A. I know for a fact there was money that went to the CTFA. Whether it was the exact amount or not,

I don't know.

Q. I understand that. But you don't know whether the Canadian Track and Field Association appointed Charlie Francis to be in charge?

5 A. No. If I had very little to do with the club, I wouldn't know.

Q. In fact, I would suggest to you that that would be most peculiar that Charlie Francis, the national coach, would be put in charge of the Mazda Track and Field Club?

10

A. I can't answer that.

Q. All right. Now, in any event, you, either on your own initiative or at the request of somebody, started to play a more aggressive role in the inter-relationship between Larry Heidebrecht, Charlie Francis, Ben Johnson, Dr. Astaphan, Waldemar and perhaps others; is that correct?

15

A. Yes.

Q. And was it Ben that made this request?

20 A. I think Ben made the request at the end of June that things were not going well. I think it was almost like -- I took it as him asking me to help him sort it out because Ben was the first person that I spoke to after, you know, the hassle started to break.

25 Q. But surely it wasn't he that suggested

that you enter into the contracts or the letters of intent as set out in Exhibits 133 and 134?

A. Oh, no.

5 Q. No. In fact, to me I think you have indicated earlier that was Charlie Francis' idea; is that correct?

10 A. No, I'm not totally positive of whether it was just Charlie's or whether it was the group when we met that we felt that we should have some type of, you know, a written agreement that just outlines something--

Q. Who was the group then?

A. Jamie, Charlie, Larry.

15 Q. That seems odd to me that Waldemar and Dr. Astaphan would be singled out and other members of that group were not. I think you said you were out of time, but I kind of find that hard to believe because surely these documents didn't take very long to draw up. They look like there were handwritten by you.

20 A. They definitely were. They were handwritten after I drove from Toronto to Ottawa after administering a bingo and prior to the opening of the National Track and Field Championships.

Q. Well, how long--

25 A. And from--in all fairness, give me a chance to say this.

Q. Sure, I apologize.

A. From the 27th of June on, the month of July was extremely hectic, you know, with talking and meeting with all sorts of people that,--such as Charlie and, you know, Ben originally and Larry to make sure that things were going to function.

Q. So that your evidence is, as I understand it, that because of your many, many duties, including looking after -- I think the school semester was over at this time?

A. Yes, it was.

Q. But you were still running those bingos I guess?

A. Yes.

Q. And you had other jobs to do, that you had no time to draw any additional documents other than the ones that we have already seen--

THE COMMISSIONER: Mr. Futerman, with respect, I think that that is quite apparent, is it not to you, as to everybody else, that what Mr. Earl was doing was trying to keep this group together for Ben's benefit. He was concerned that the group was falling apart and that Ben's performance would be affected, and all of this was done for your client's benefit, as far as I can see. Am I wrong in that, Mr. Earl?

THE WITNESS: No, you are correct.

THE COMMISSIONER: You have to be fair about that, Mr. Futerman.

5 MR. FUTERMAN: That's your opinion, sir, and I respect--

THE COMMISSIONER: Well, is there any other opinion?

MR. FUTERMAN: There is other opinions, sir.

10 THE COMMISSIONER: Well unless I'm missing it, I can't see any animosity at all from Mr. Earl to your client.

MR. FUTERMAN: I can see the other opinion being that this was done also for the benefit of Charlie Francis and he was--

15 THE COMMISSIONER: Charlie Francis wasn't running in Seoul.

MR. FUTERMAN: Well, I know that, but he had a vested interest in Ben as well.

20 THE COMMISSIONER: Well, I'm sorry, then I misunderstood. I thought that there was--and I could be wrong, but I thought it must be--

MR. FUTERMAN: And you could be right, sir.

25 THE COMMISSIONER: Mr. Earl was highly motivated in this area for Ben's sake. He's befriended

Ben, as you have heard, all these years on a purely voluntary basis. I don't want to jump the gun, and if I'm wrong, you'll persuade me to that effect.

5 MR. FUTERMAN: I say that's a matter of argument, and I don't think it's appropriate for me to argue that point now.

THE COMMISSIONER: I may be misapprehending the evidence. I thought it was so apparent, but I may have misapprehended it. If I did, you will correct me.

10 MR. FUTERMAN: Well, I'll do my best.

THE COMMISSIONER: And you will start to do that tomorrow morning at ten o'clock.

MR. FUTERMAN: We'll try, sir. Thank you.
---Adjourned for the day.

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